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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 221

JAMES M. LANDIS, ET AL., PETITIONERS

vs.

THE NORTH AMERICAN COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 24, 1936

CERTIORARI GRANTED OCTOBER 12, 1936

SUPREME COURT OF THE UNITED STATES

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1 [Captions omitted.]

2 In Supreme Court of the District of Columbia
In Equity. No. 60136

THE NORTH AMERICAN COMPANY, STREET POST OFFICE ADDRESS: NO. 60 BROADWAY, NEW YORK, NEW YORK, PLAINTIFF

vs.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION OF THE UNITED STATES, HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, DEFENDANTS

Bill of complaint (for injunction)

Filed November 26, 1935

To the Honorable the Justices of the Supreme Court of the District of Columbia:

Plaintiff, The North American Company, brings this, its bill in equity, against the defendants above named and respectfully shows:

I

The plaintiff

Plaintiff is a corporation duly organized and existing under the laws of the State of New Jersey, is a resident and citizen of the State of New Jersey, and brings this suit in its own right. Plaintiff's principal office in the State of New Jersey is located at No. 15 Exchange Place, Jersey City; plaintiff is duly qualified to do business in the State of New York and maintains its principal executive offices in said State at No. 60 Broadway in the city of New York.

II

The defendants

Defendants James M. Landis, George C. Matthews, Robert
3 E. Healy, and James D. Ross are members of and constitute the Securities and Exchange Commission (hereinafter referred to as the "Commission"), which is an independent agency in the executive branch of the government of the United States established by an Act of Congress, approved June 6, 1934, known as the "Securities and Exchange Act of 1934"; defendant Homer S. Cummings is the duly qualified and acting Attorney General of the United States; defendant James A. Farley is the duly qualified and acting Post-

master General of the United States. Each of the defendants is a citizen of the United States and each is an inhabitant of and can be found in the District of Columbia.

III

The Grounds Upon Which the Court's Jurisdiction Depends

This is a civil suit in equity within the equity jurisdiction of the Supreme Court of the District of Columbia wherein the matter in controversy exceeds the sum or value of Three Thousand Dollars ($3,000) exclusive of interest and costs. The suit is one arising under the Constitution and laws of the United States in that plaintiff seeks, among other things, to enjoin the defendants herein, and each of them, from performing acts which they threaten to perform in an attempt to enforce against plaintiff the provisions of Title I of an Act of Congress, approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" (said Title I of said Act being hereinafter referred to as the "Public Utility Holding Company Act of 1935" or the "Act"), and from instituting or causing to be instituted any action or proceeding against plaintiff, its officers, directors, agents, or employees, on account of any alleged violation of said Act, for the reason that said Act violates the Constitution of the United States, and the Amendments thereto, in the particulars, among others, hereinafter set forth, and in that plaintiff, upon the aforesaid grounds, seeks a judgment holding said Act and each and every provision thereof unconstitutional, null and void; and in that plaintiff seeks a judgment under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512,
4 48 Stat. 955, Title 28 U. S. C. A. § 400) declaring said Act, and each and every provision thereof, to be unconstitutional, null, and void.

IV

Plaintiff's corporate character, its outstanding securities and the nature of its business

(a) Plaintiff was incorporated under the laws of the State of New Jersey on June 14, 1890, and, by virtue of the provisions of its certificate of incorporation filed in accordance with the laws of the State of New Jersey, was given and now possesses, authority under said laws, among other things, to acquire, hold and own stocks and other securities.

(b) Prior to August 26, 1935, plaintiff issued, and has now outstanding in the hands of the public, the following securities:

$23,788,000 principal amount of 5% Debentures, due February 1, 1961, with a present market value in excess of $24,000,000.

$30,317,950 par value of 6% Cumulative Preferred Stock, $50 par value, with a present market value in excess of $32,000,000.

8,575,335 shares of Common Stock, without par value, having a present market and asset value each in excess of $230,000,000.

(c) A registration has been for some time, and is now, effective as to each class of securities of plaintiff above listed, in accordance with the provisions of the Securities and Exchange Act of 1934.

(d) Plaintiff has more than 72,000 preferred and common stockholders, over 61,000 of whom held, as of September 10, 1935, each not more than 100 shares of preferred or common stock of plaintiff.

(e) The business of plaintiff consists, and has consisted since shortly after its incorporation in 1890, in acquiring, owning and holding stocks and other securities, primarily for long term investment. In the lawful and proper pursuit of such business plaintiff has invested very large sums of money in stocks and other securities, the aggregate present fair value (based on market quotations where available) of plaintiff's investments being in excess of $300,000,000.

5 (f) The principal investments of plaintiff are in the stocks of "holding companies" as that term is defined in Section 2(a)(7)(A) of the Act, and in the stocks of "public utility companies" as that term is defined in Section 2(a)(5) of the Act. Plaintiff owns, controls or holds with power to vote, more than 10 per centum of the outstanding voting securities of such companies and in consequence such companies are "subsidiary companies" of plaintiff, as that term is defined in Section 2(a) of the Act. Certain of such "subsidiary companies"[1] of plaintiff themselves have "subsidiary companies" which are "holding companies." None of such "public utility companies" or "holding companies" in which plaintiff has an investment carries on business in the State of New Jersey.

(g) The investments of plaintiff consist in the main of its ownership of a majority of the voting securities of North American Edison Company, North American Light and Power Company, both Delaware corporations, Washington Railway and Electric Company, a corporation organized under an Act of Congress, and Western Power Corporation, a New York corporation, each of which corporations is itself a "holding company", and its ownership of more than 10 per centum, but much less than a majority in each instance, of the voting securities of The Detroit Edison Company, a New York corporation, and Pacific Gas and Electric Company, a California corporation. These investments represent substantial equity interests in large public utility operating properties, chiefly electric but partly gas and transportation, centered in Cleveland, Milwaukee, St. Louis, Washington, Detroit, San Francisco, central Illinois, central Iowa and parts of Kansas.

(h) The "public utility companies" engaged in operating the utility properties hereinabove mentioned have outstanding large

[1] Whenever any of the words or phrases defined in Section 2 of the Act are hereinafter used they are intended to have the meaning given to them by said Section, unless the context requires a different meaning.

amounts of lien bonds, debentures and other securities not owned or controlled by plaintiff. None of the "public utility companies" or "holding companies" or other companies in which plaintiff owns any stock, engages in or employs any of its properties in the generation, transmission or distribution of electric energy in interstate commerce.

6 (i) Plaintiff also has a substantial investment in stocks and other securities of corporations which are neither "public utility companies" nor "holding companies". Plaintiff's investments of this character consist in the main of its ownership of all or a controlling majority of the voting securities of (a) 60 Broadway Building Corporation, a New York corporation, the sole asset and business of which is the ownership and operation of the office building in New York City in which plaintiff's principal executive offices are located; (b) West Kentucky Coal Company, a New Jersey corporation, which with its subsidiary companies, all wholly owned, are engaged in the business of mining and selling coal; (c) Wired Radio, Inc., a Delaware corporation, engaged in developing patents in the wired radio field; (d) Associated Music Publishers, Inc., a Delaware corporation, engaged in the business of music publishing; and (e) plaintiff's ownership of the entire preferred stock and approximately 80% of the voting stock of North American Utility Securities Corporation, a Maryland corporation, an investment company whose assets consist of diversified stocks and securities. These companies while neither "public utility companies" nor "holding companies", within the definition of the Act, are nevertheless "subsidiary companies" of plaintiff, as that term is defined in Section 2(a)(8)(A) of the Act, and, in consequence, are themselves subject to many provisions of the Act as hereinafter more particularly set forth.

(j) Plaintiff has employed for many years, and now employs, a number of persons, qualified by training and experience to advise and assist plaintiff in respect of its investments. Their advice and assistance in this respect are essential to the proper conduct of plaintiff's business.

(k) In connection with its business of owning and holding the stocks and other securities of corporations, plaintiff collects dividends upon such stocks and interest upon such other securities, receives interest on advances to its subsidiaries, receives miscellaneous other income, pays interest upon its debentures and distributes dividends to its stockholders. Plaintiff has employed for many years and now employs, a number of persons to perform the clerical and accounting work required for such collection and distribution.

(l) In making its investments, plaintiff has followed a policy of acquiring, in most instances, an investment so sub-
7 stantial that plaintiff is in a position, through the exercise of its voting rights, to satisfy itself that each company in which such investment has been made will always have a board of directors able and willing to provide an efficient management and

one best calculated to develop the corporate enterprise along permanently sound lines, and thus, in so far as is compatible with the public interest, to enhance the value of plaintiff's investment therein. The corporations in which plaintiff has invested are each organized under the laws of one of the States of the United States, except that one of such corporations is organized under an Act of Congress. Each of the corporations in which plaintiff has investments maintains an organization responsible only to its own board of directors, and each functions under the control of its own board of directors in accordance with the laws under which it is incorporated. Nearly all of such companies have outstanding large amounts of securities not owned or controlled by plaintiff. The value of these securities will be seriously affected and their market value greatly impaired and largely destroyed by the enforcement of the Act against plaintiff and its "subsidiary companies."

(m) Plaintiff is not engaged in the business of sending or transporting or causing to be sent or transported, goods, commodities, or services in commerce with foreign nations or among the several States or with the Indian tribes, or in any other kind of interstate commerce, and such use as plaintiff has made, now makes or intends to make of the mails or any other means or instrumentality of interstate commerce is merely incidental to the interstate business of plaintiff hereinabove described, and is for lawful purposes, not in any manner contrary to any regulation of the postal authorities or to any law or purported law of the United States, except insofar as it may be contrary to the terms of the Public Utility Holding Company Act of 1935 or to regulations which may be issued under the purported authority of said Act.

V

Plaintiff is a "Holding Company"

Plaintiff is advised by counsel, and on such advice believes and alleges, that it is a "holding company" as that term is defined
8 in Section 2 (a) (7) (A) of the Public Utility Holding Company Act of 1935. Plaintiff is also advised by counsel, and on such advice believes and alleges, that no application by it under Section 2 (a) (7) of the Act for a declaration that it is not a "holding company" could truthfully negative the facts required by subsection (i) thereof to be negatived as one of the conditions of such declaration, in that plaintiff, by virtue of stock ownership, controls certain "public utility companies" and certain "holding companies" as hereinabove in paragraph IV alleged. Plaintiff is likewise advised by counsel, and on such advice believes and alleges, that it could not in good faith file an application for such declaration and that the Commission could not, under the terms of said Section 2 (a) (7), lawfully declare the plaintiff not to be a "holding company" under subsection (A) of said Section 2 (a) (7), even if

the Commission should find the facts with respect to plaintiff to be as specified in subsection (iii) of said Section 2 (a) (7). Plaintiff is also informed by counsel, and on such advice believes and alleges, that the Commission could not lawfully, under the terms of Section 3 (a) of the Act or of any other section thereof, exempt plaintiff from the provisions of the act even if the Commission found that such exemption would not be detrimental to the public interest or to the interest of investors or consumers.

VI

Plaintiff Is Required by the Act to Register with the Commission

Plaintiff has outstanding securities which, by use of the mails or other means or instrumentality of interstate commerce, were distributed or made the subject of a public offering subsequent to January 1, 1925. Certain of such securities were owned or held on October 1, 1935 by persons not resident in the State of New Jersey, and plaintiff therefore is required, by the terms of Section 4 (b) of the Act, to register on or before December 1, 1935 with the Commission, by filing with said defendant a notification of registration provided for by Section 5 of the Act. Plaintiff is further required by said Section 5 of the Act, within a period after registration to be fixed by the Commission, to file a registration statement with said defendant, which statement must include the items of information specified in Section 5 (b) (1), (2) and (3) of the Act.

9

VII

Effect of Registration: the "Death Sentence"

(a) Registration by a "holding company" with the Commission, as required by Section 4 (b) of the Act, is, according to the provisions of the Act, not merely a means of providing the Commission or the public with information, but amounts to the surrender of the status of an unregistered company and to the acceptance of a license under which the registrant is permitted to do the things forbidden to an unregistered company by Section 4 (a), which things are necessary to the ordinary conduct of the business of this plaintiff. By such registration plaintiff would be permitted to do said things only under the conditions and limitations prescribed by the Act and under the direction and control of the Commission. Such registration is the means provided by the Act whereby plaintiff and its "subsidiary companies" would be brought under the jurisdiction of said Commission and the means by which said Commission would be enabled to carry out the mandate, under Section 11 and other sections of the Act, to dismember and destroy the business of plaintiff, and completely to regulate, control, and reorganize such business pending plaintiff's ultimate dismemberment and destruction.

(b) Under said Section 11 the Commission is directed, as soon as practicable after January 1, 1938, to limit the combined operations of plaintiff and all its "subsidiary companies", of the securities of which the Commission does not require plaintiff to divest itself, to a single "integrated public utility system", as that term is defined in Section 2 (a) (29) of the Act, and "to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such integrated public utility system." Said Section 11 embraces plaintiff's "subsidiary companies" within its scope and is limited only by:

(1) a proviso that a registered holding company may "continue to control one or more additional integrated public utility systems" if the Commission finds:

(a) each of such additional systems cannot be operated independently without the loss of substantial economies obtainable by retention of control by such holding company of such systems;

(b) all of such additional systems are located in one state or in adjoining states or in a contiguous foreign country; and

(c) the continued combination of such systems under the control of such holding company is not so large as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation;

(2) a proviso that the Commission "may permit as reasonably incidental or economically necessary or appropriate to the operations of one or more integrated public utility systems, the retention of an interest in any business (other than the business of a public utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

(c) Under the provisions of the Act referred to above in this paragraph, the Commission is empowered and directed to destroy one of the most important and vital elements in plaintiff's business, to-wit, the element of diversification. It has been plaintiff's settled policy to select its investments in the public utility field so that the operating properties of the companies it controls shall be in different states and groups of states and regions. The purpose underlying this policy is to avoid the hazards of local and regional vicissitudes and depressions due to industrial, economic and other changes which might unduly depress the value and impair or destroy the earning power of the public utility properties in any individual locality or region. This diversification is necessary to the proper and successful conduct of plaintiff's business, because plaintiff is thereby enabled at all times to maintain sufficient earnings and financial resources so that it can withstand depressions, and so that it can provide local subsidiaries or groups of subsidiaries, whose earnings may be temporarily impaired, with necessary funds which they could not procure except from plaintiff. This diversi-

fication enables plaintiff to command a wide and sure market for its own securities in amounts large enough to provide the necessary junior capital funds for such improvement and expansion of the properties of its subsidiaries as the needs and demands of the public may require. The destruction by the Act of the element of
11 diversification in plaintiff's business, even though postponed until after January 1, 1938, constitutes an immediate and substantial injury to plaintiff and its stockholders.

(d) Under Section 11 (b) (2) of the Act, registration by plaintiff makes it the duty of the Commission, upon a finding by it that plaintiff's corporate structure or continued existence of the corporate structure or continued existence of any other company in its "holding company system", "unduly or unnecessarily complicates the corporate structure" of such system, or unfairly or inequitably distributes voting power" among security holders of such system, to require the plaintiff and/or any of its subsidiary companies "as soon as possible after January 1, 1938", to take such steps as the Commission shall find necessary to ensure against said results. Said provision of Section 11(b) (2) is subject only to an exception (not applying to the plaintiff, but only to certain of its "subsidiary companies") to the effect that the Commission shall not require any change in the corporate structure or existence of any company which is not a "holding company", or whose principal business is that of a "public utility company", except for the purpose of fairly and equitably distributing voting power among the security holders of such company.

(e) Under the aforesaid Sections of the Act, therefore, registration by plaintiff enables the Commission to exercise against plaintiff the mandate of the Act under which plaintiff, after January 1, 1938, is required to dispose of most of its investments, direct or indirect, in the stocks and securities of "public utility companies" and "holding companies." The Commission is likewise given power, in its uncontrolled discretion, under said section as aforesaid to require plaintiff to dispose of its investments, direct or indirect, in companies not engaged in business either as "public utility companies" or "holding companies." Said Section 11 of the Act, therefore, pronounces a "death sentence" upon plaintiff under which the Commission is empowered and directed to paralyze and dismember plaintiff's business and to force its complete disintegration.

(f) At the same time that plaintiff would be required, as hereinabove set out, to dispose of most of its investments, many other "holding companies" throughout the United States would be required to market similar investments. Under such circumstances,
12 constituting practically simultaneous forced sales of similar securities amounting to billions of dollars in total value, it would not be possible, upon such sale and disposition, to realize anywhere near the fair long range values of plaintiff's investment and in consequence an enormous and unnecessary loss would be arbitrarily visited upon plaintiff and its stockholders.

(g) Said Section 11 of the Act, constituting in substance a "death sentence" pronounced upon plaintiff, requires the immediate abandonment of policies developed by plaintiff over a long period of years in the lawful conduct of its business. The assets of plaintiff are to a preponderant extent invested, directly or indirectly, in a relatively small number of utility enterprises in each of which the investment is very large. Such investments were designed to be of a permanent character and as such require the application of policies calculated to maintain and increase underlying values over a period of years. It is vitally important for the utility enterprises in which plaintiff has invested to be in a position at all times to obtain new capital for expansion to meet increasing demands for service and at low cost to the public. Therefore, it has been the policy of plaintiff to build up the value of the equities of utility enterprises in which it has investments so that proper and prudent balance is maintained between common stock equities and securities representing fixed obligations, in order that new capital may be obtained by such companies without the creation of a funded or current indebtedness so great as to imperil such companies during periods of impaired earnings or depression. In furtherance of this policy, plaintiff has invested large additional sums in "public utility companies" and public utility "holding companies" which were already its subsidiary companies", as that term is defined in Section 2 (a) (8) (A) of the Act, and also such companies, and their subsidiary "public utility companies" have, with plaintiff's approval, and under the control of directors elected by vote of stock owned or controlled by plaintiff, retained large amounts of earnings for investment in their properties and businesses instead of distributing such earnings by way of dividends. During the last ten years alone, such investments by plaintiff and such "plowed back" earnings exceeded $130,000,000, excluding earnings so "plowed back" by "subsidiary companies" in which plaintiff and its subsidiary "holding companies" held
13 less than a majority interest in the voting securities. In order to support and render more valuable plaintiff's utility investments, plaintiff has invested in and extended financial aid to companies which seek to develop for the future new fields involving the use of electric power. Said Section 11 of the Act prevents the continuance of said policies of plaintiff and prevents any attempt by plaintiff to enhance the long range value of its investments, all to the great and irreparable loss and damage of plaintiff and its stockholders.

(h) said Section 11 of the Act, constituting in effect a "death sentence" pronounced upon plaintiff, threatens the imminent disruption of plaintiff's management and personnel. In order to conserve its investments and to increase their value, plaintiff has, over a long period of years, created and built up a management composed of persons of broad experience and sound judgment with respect to investments of the character made by plaintiff. Such management is skilled in solving financial and other problems of utilities and

enjoys to a unique degree the acquaintanceship and confidence of the business and financial community. Plaintiff has also built up an organization for the purpose of assisting its management in the selection, handling, and disposition of plaintiff's assets and affairs. The persons comprising plaintiff's management and organization have been in plaintiff's employ for many years and are virtually irreplaceable. It cannot be expected that such persons will continue to remain in plaintiff's employ on account of the proximate elimination of plaintiff and of its enterprise which is contemplated by the "death sentence" pronounced upon plaintiff by the Act. Plaintiff cannot, in the face of the drastic provisions of the Act, continue to maintain its valuable management and organization and such management and organization, if dissipated, cannot be created and built up for a long period of time, if at all, and its loss by reason of the premises will visit a very large and irreparable damage upon plaintiff and its stockholders.

(i) Said Section 11 of the Act, constituting a "death sentence" pronounced upon plaintiff, prevents a consolidation, now and for some time past desired by plaintiff, of North American Edison Company and Western Power Corporation with plaintiff. Said North American Edison Company, a Delaware corporation organ-
14 ized in 1922, and Western Power Corporation, a New York corporation organized in 1915, are "holding companies" intervening between plaintiff and public utility operating companies in the "holding company system" of which plaintiff is a part and each has large amounts of securities outstanding not owned or controlled by plaintiff. For several years plaintiff has desired to consolidate said "holding companies" with plaintiff, but the laws of Delaware and New York would not permit. In April 1935 the laws of Delaware and New York were amended and such consolidation may now lawfully be effected in accordance with such laws as so amended. Plaintiff would have proceeded, immediately upon the amendment of the laws of Delaware and New York as above described, to effect a consolidation with North American Edison Company and Western Power Corporation, but the pendency of the Act in Congress and the adverse effects of the Act upon the securityholders of such companies and of plaintiff made it impossible to do so. By reason of the existence of the Act and the enforced dismemberment and elimination of plaintiff contemplated thereby, it has been impossible, since the enactment of the Act, and is now impossible, to effect the desired consolidation, whereas, in the opinion of plaintiff, it would have been, and now and in the future would be, entirely possible and feasible for plaintiff to effect such consolidation if it were not for said Act.

The Revenue Act of 1935, approved by the President on August 30, 1935, imposes a tax amounting to 1½% on all dividends received by a corporation in 1936 and subsequent years from another corporation subject to taxation on its income. Dividends received by plaintiff from North American Edison Company and Western Power Corporation for the year 1934 amounted in the aggregate to $5,179,936.60;

for the year 1935 plaintiff estimates that such dividends will amount in the aggregate to approximately $6,600,000; and for the year 1936 plaintiff estimates that such dividends will amount in the aggregate to not less than $6,750,000. The estimated amount of intercorporate dividend tax payable by plaintiff in respect of 1936 dividends from North American Edison Company and Western Power Corporation is, therefore, approximately $101,250. The payment of such amount in respect of any year would not be required if plaintiff, prior
15 to the beginning of such year, could effect the consolidation hereinabove described. In this respect, therefore, among others, the inability of plaintiff, by reason of the existence of said Act, to effect such a consolidation constitutes an immediate and substantial and irreparable injury to plaintiff and its stockholders.

VIII

Other Effects of Registration: Complete Regulation and Control of Plaintiff Preparatory to Execution of the "Death Sentence"

(a) Registration by plaintiff with the Commission as required by Section 4 (b) of the Act would not only enable the Commission, after January 1, 1938, to enforce the decree for the destruction of plaintiff's business, but such registration would also enable said Commission, pending such destruction, completely to regulate and control the business of plaintiff.

(b) Registration by plaintiff with the Commission would immediately make impossible the proper conduct of plaintiff's business by reason of the following, among other, regulatory powers vested in the Commission:

1

Issue and Sale of Securities

(1) Under the provisions of Sections 6 and 7 of the Act it would be unlawful for plaintiff or its "subsidiary companies" (except in cases permitted under the exercise of the power given to the Commission to exempt subsidiary companies of the plaintiff with respect to the issue or sale of certain of their securities issued for limited purposes and under certain defined circumstances), to issue or sell any of their own securities, or to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of any of their own outstanding securities, without the consent of the Commission.

(2) Under these sections, plaintiff's directors would no longer be permitted to exercise their discretion as to the type of securities which should be issued by plaintiff in order to meet conditions in the money markets at the time the issue of such securities becomes
16 necessary. These sections of the Act do not permit the Commission to grant its consent to the issue or sale of securities by plaintiff unless the security to be issued or sold is

"a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant;"

or

"a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors;"

(3) I norder that plaintiff may continue to fulfill its function of building up the equities of the utility enterprises in which it has investments, it is necessary for plaintiff to be prepared to raise additional capital funds through the issue and sale of plaintiff's own securities. It is impracticable for plaintiff to issue either of the two types of securities above specified. Although plaintiff's assets are worth over $300,000,000 it owns no substantial amount of the limited kind of assets above specified as necessary for the securing of bonds. Moreover, plaintiff's charter, lawfully granted under the laws of New Jersey, authorizes plaintiff to issue additional preferred stock and common stock without par value, and does not authorize plaintiff to issue common stock having a par value. Plaintiff's ability to raise needed capital funds on advantageous terms depends on the judgment of the money market from time to time as to the value of investments in the plaintiff's securities and also depends upon plaintiff's ability to offer on the market the particular kind of security then most desired by the investing public. The imposition upon the plaintiff of arbitrary and unreasonable restrictions upon the kinds of securities which it may issue, for the foregoing, among other reasons, constitutes an immediate and substantial injury to plaintiff and its stockholders.

17 (4) The only exceptions to this limitation on the types of securities which plaintiff would be permitted to issue under the Act, are when the security to be issued or sold is solely for the purpose of "refunding, extending, exchanging, or discharging" an outstanding security of plaintiff "or for the purpose of effecting a merger, consolidation, or other reorganization;" or "for necessary and urgent corporate purposes" of plaintiff where the limitations "would impose an unreasonable financial burden" upon plaintiff "and are not necessary or appropriate in the public interest or for the protection of investors or consumers;". Such vague and indefinite standards would render highly speculative the circumstances under which plaintiff might be permitted to issue securities other than par value common stock or bonds, except in the case of meeting maturing issues or to effect a merger, consolidation or other reorganization, and such uncertainty would render it impracticable for plaintiff to do timely and advantageous financing and refunding.

(5) The Commission moreover could not grant its consent to plaintiff to issue such securities if it found, among other things, that "(1) the security is not reasonably adapted to the security structure of the declarent and other companies in the same holding company system: (2) the security is not reasonably adapted to the earning power of the declarant: (3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of the business in which the applicant lawfully is engaged or has an interest, or (4) the fees, commissions, or other remunerations, to whomsoever paid, directly or indirectly, in connection with the issue, sale or distribution of the security are not reasonable." The Act provides no standards or tests by which the Commission or plaintiff might determine whether the security to be issued is or is not "reasonably adapted" to plaintiff's earning power or to plaintiff's security structure or the security structure of other companies in plaintiff's "holding company system." No tests or standards are provided by the Act for the determination of whether commissions or fees to be paid in connection with the issuance and sale of the securities are "reasonable" or whether the financing
18 is "necessary or appropriate" to the "economical and efficient operation" of plaintiff's business as required by the Act. In the conduct of plaintiff's business, financing must be foreseen and planned for considerably in advance of the actual issuance of the securities. The uncertainty because of the above provisions as to whether a particular issue of securities would be approved under the Act and the absence of any tests or standards to control the discretion of the Commission in deciding to approve or to disapprove the issue, and by which the plaintiff in making its plans for financing could be guided, would seriously interfere with and hamper plaintiff's Board of Directors and officers in the proper conduct of plaintiff's business, and, because of the necessity of prompt action in order to take advantage of favorable market conditions, would often prevent advantageous and necessary financing.

2

Acquisitions of Property

(1) Under the provisions of Sections 9 and 10 of the Act it would be unlawful for plaintiff, or for any of its "subsidiary companies" (with certain relatively unimportant exceptions) to acquire "any securities or utility assets or any other interest in any business" without the consent of the Commission. Said Commission is expressly prohibited under Section 10 (c) (2) from approving the acquisition by plaintiff of any securities or utility assets of a public utility company or a holding company unless such acquisition would tend toward "the economical and efficient development of an integrated public utility system." If a proposed acquisition would not have this effect, the Commission is powerless to approve, although it might

be in the public interest for it to do so. The plaintiff's freedom of contract is thus greatly impaired by the express terms of the Act itself and plaintiff is thereby deprived of one of the fundamental economic reasons for its existence, namely, the making of sound investments on a basis of geographical diversity.

(2) Even though a proposed acquisition would tend towards the efficient and economical development of an integrated public utility system, the Commission under Section 10 (b) of the Act cannot approve the acquisition if it finds that (1) the acquisition "will tend towards interlocking relations or the concentration of control of public utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;" or (2) the consideration to be paid for the securities or utility assets to be acquired is not reasonable "or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired;" or (3) the acquisition will "unduly complicate the capital structure of the holding company system * * * or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning" of the holding company system. In these provisions also there are no standards or tests provided to guide plaintiff or the Commission in determining whether a proposed acquisition complies with these vague and indefinite conditions. Acquisitions of property and securities require the preparation of plans and the working out of details long in advance of the actual acquisition. Plaintiff's freedom of contract would thereby be impaired, and the difficulties and uncertainties inevitably resulting from these provisions would seriously embarrass, impair, and disrupt the plaintiff's proper and lawful conduct of its business.

3

Investigatory Powers of the Commission

Under Section 11 (a) of the Act plaintiff would immediately upon registration be subject to a sweeping investigation by the Commission, which investigation would cause great expense and damage to plaintiff and all its "subsidiary companies", such expense and damage being occasioned by the necessity of preparing voluminous reports and answers to numerous questionnaires which would be required by the Commission, and by the necessity of retaining, in the various parts of the country in which the offices and properties of such companies are located, numerous attorneys, accountants, and consulting engineers to assist plaintiff and such companies in presenting their cases to the Commission and in safeguarding their legal and constitutional rights and the rights of the various classes of security-holders. Such investigation would also result in additional substantial loss and damage to plaintiff and all such other companies through interference with the performance of the

regular duties of their executive officers and accounting and clerical staffs.

4

Loans, Dividends, Proxies, and Other Corporate Matters

(a) Under the provisions of Section 12 of the Act it will be unlawful for plaintiff, and also (except as to the matters hereinafter in subdivision (3) of this paragraph alleged) for any of its subsidiary companies, to do, among other things, any of the following things, in contravention of rules, regulations, or orders which the Commission may prescribe with respect thereto:

(1) To lend or in any manner extend its credit to or to indemnify any other company in the plaintiff's holding company system. The rules, regulations, or orders which the Commission is to promulgate with respect to said acts are to be such as the Commission deems necessary or appropriate, among other things, in the public interest or for the protection of investors or consumers.

(2) To declare or pay any dividend on any of its securities or to acquire, retire, or redeem any of its securities. The rules, regulations, or orders which the Commission is to promulgate with respect to said acts are to be such as the Commission deems necessary or appropriate, among other things, to protect the financial integrity of companies in plaintiff's holding company system.

(3) To sell any security which it owns of any "public utility company." The rules, regulations, or orders which the Commission is to promulgate with regard to said acts are to be rules regarding the consideration to be received for such sales, the maintenance of competitive conditions, fees and commissions, accounts, disclosures of interest, and similar matters; and they are to be such as the Commission deems necessary or appropriate, among other things, for the protection of investors or consumers.

(4) To solicit or to permit the use of its name to solicit any proxy, power of attorney, consent, or authorization regarding any of its securities. The rules, regulations, or orders which the Commission is to promulgate with respect to said acts are to be such as the Commission deems necessary or appropriate, among other things, in the public interest or for the protection of investors or consumers.

21 (5) To negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under the Act, with any company or with any affiliate of any company in the plaintiff's holding company system. The rules, regulations, or orders which the Commission is to promulgate with regard to said acts are to be rules regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters; and they are to be such as the Commission deems necessary or appropriate, among other things, in the public interest or for the protection of investors or consumers.

(b) In the above provisions of Section 12 there are no standards or tests provided to guide plaintiff or the Commission in determining whether any of the rules, regulations, or orders issued by the Commission comply with the vague and indefinite conditions laid down in the Act. The threat of imposition upon plaintiff and upon its "subsidiary companies" of these rules, regulations, and orders, which will seriously interfere with the proper management of the business of plaintiff by its Board of Directors and with the proper management of the business of the several "subsidiary companies" of plaintiff by their respective boards of directors constitutes an immediate and substantial injury to plaintiff and its stockholders.

5

Accounting, Reports, and Other Matters

Under numerous provisions of the Act, plaintiff, if it registers, and, in most cases, each of its subsidiary companies also, would be required to file with the Commission reports and other papers of the most comprehensive and detailed character with respect to practically every phase and aspect of their business, including those which have not even the remotest connection with or any possible effect on interstate commerce. Under Section 15 (e) of the Act it is also expressly made unlawful for any of them to keep their "accounts, cost accounting procedures, correspondence, memoranda, papers, books, and other records" otherwise than in the form and manner prescribed by the Commission after said defendant has pre-
22 scribed such form and manner. In addition they will be subject to visitatorial powers of the Commission of the most drastic, comprehensive, and detailed nature, and with respect to matters which have no connection with nor any possible effect on interstate commerce. Among other things plaintiff and its subsidiary "holding companies" would be required to file within a "reasonable time" to be fixed by the Commission, "registration statements", the matters which must be included therein being specified in Section 5 (b) of the Act. The cost to plaintiff and its subsidiary "holding companies" of compiling the data necessary to be included in said "registration statements" under the terms of Section 5 (b) would probably be substantially in excess of $50,000.

(c) Registration by plaintiff with the Commission, by reason of the foregoing extensive regulatory powers vested in said defendant, would subject plaintiff, as hereinabove alleged, to the control and direction of the Commission as to virtually every aspect of its business and corporate life, and would substantially oust plaintiff's officers and directors from such direction and control.

(d) Section 12 of the General Corporation Act of the State of New Jersey provides in material part as follows:

"The business of every corporation shall be managed by its directors * * *."

The common law of the State of New Jersey likewise imposes upon directors of a corporation incorporated in the State of New Jersey the duty of managing the business of such corporation. The transfer and delegation of the management of plaintiff's business and corporate enterprise from its Board of Directors to the Commission, by reason of the regulatory powers conferred upon said Commission by the Act as hereinabove enumerated, would be contrary to and in violation of both the statute law and the common law of the State of New Jersey.

IX

Impairment of Plaintiff's Investments in "Holding Companies"

Registration by plaintiff with the Commission, as hereinbefore in paragraphs VII and VIII alleged, would bring
23 plaintiff under the jurisdiction of the Commission, would enable said Commission to carry out the "death sentence" imposed upon plaintiff by the Act and thus to dismember and destroy its business, would give rise to complete control of plaintiff under the Act pending its dismemberment and destruction, and would thereby subject plaintiff and its stockholders to great, immediate and irreparable damage, loss, and injury all as more particularly hereinbefore alleged. Such damage, loss, and injury would likewise be caused to the "holding companies" and "[illegible] companies" whose stocks and securities plaintiff owns, by reason of the applicability of all or certain parts of the Act to such companies. In consequence the Act directly and immediately threatens to and does impair and diminish the value of plaintiff's investment in such companies and thus arbitrarily inflicts upon plaintiff and its stockholders further great, immediate, and irreparable damage, loss, and injury.

X

The Unconstitutionality of the Act

Plaintiff is advised by counsel, and, on such advice, believes and alleges, that the Public Utility Holding Company Act of 1935 is invalid, void, and of no effect in that said Act violates and contravenes the provisions of the Constitution of the United States and the Amendments thereto, in the following respects, among others:

1. Said Act is not a valid exercise of the power of Congress to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes and seeks to impose arbitrary and unconstitutional restrictions upon such commerce; is not a valid exercise of the power of Congress to establish Post Offices and post Roads and seeks to impose arbitrary and unconstitutional restrictions upon the use of the mails; is not a valid exercise of any power conferred by the Constitution upon Congress; and is, therefore, in violation of Article I, Section 8 of the Constitution.

2. Said Act attempts unlawfully to delegate legislative power to the Commission in violation of Article I of the Constitution.

3. Said Act attempts to deprive plaintiff, its debentureholders and its stockholders of their property without due process of law in violation of the Fifth Amendment to the Constitution.

4. Said Act attempts to take the private property of plaintiff, its debentureholders and its stockholders for public use without just compensation in violation of the Fifth Amendment to the Constitution.

5. Said Act attempts to impose excessive fines and cruel and unusual punishments upon plaintiff, in violation of the Eighth Amendment to the Constitution.

6. Said Act attempts unlawfully to impose a Federal system of regulation and destruction upon plaintiff and thereby attempts to invade and usurp powers reserved to the States, all in violation of the Tenth Amendment to the Constitution.

7. Said Act attempts to subject plaintiff to unreasonable searches and seizures in violation of the Fourth Amendment to the Constitution.

8. Said Act seeks to deprive plaintiff of its right to a judicial determination of all questions of fact affecting its constitutional rights, and thereby deprives plaintiff of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

Plaintiff is further advised by counsel and, on such advice, believes and alleges that said Public Utility Holding Company Act of 1935 is inseparable in its provisions and that in consequence said Act is in its entirety unconstitutional, invalid, null and void.

XI

Plaintiff's Reasons for Not Registering

(a) Being advised by counsel that said Public Utility Holding Company Act of 1935 is, in its entirety, unconstitutional, invalid, void, and of no effect, plaintiff cannot, in the protection of its rights and those of its debentureholders and stockholders, submit itself in any way to the jurisdiction of the Commission or register with said Commission as required by Section 4 (b) of the Act.

(b) Plaintiff is advised by counsel, and, on said advice, believes and alleges that registration by it with the Commission, as required by Section 4 (b) of the Act, might seriously prejudice and jeopardize the right of plaintiff to the prompt and timely equitable relief necessary to prevent great, immediate, and irreparable damage and injury to plaintiff, its debentureholders and its stockholders by reason of the harsh and drastic provisions of the Act, all as in this bill of complaint alleged, and that such registration by plaintiff, even if qualified pursuant to an understanding or

arrangement with the Commission, might seriously prejudice and jeopardize plaintiff's right to adequate protection against the immediate injury threatened to plaintiff, its debentureholders and its stockholders by reason of said harsh and drastic provisions of the Act. Being so advised in the premises, plaintiff is obliged, in the protection of its constitutional rights and the constitutional rights of its numerous and scattered debentureholders and stockholders, not to submit voluntarily to the jurisdiction of the Commission or voluntarily to register with said Commission and, in consequence, plaintiff does not intend voluntarily to register with the Commission or voluntarily to submit itself or its properties and business to the control of said Commission, and plaintiff asserts in this proceeding the unconstitutionality and invalidity of the Act as applied to it and seeks the protection of this Honorable Court sitting in equity.

XII

Consequences to Plaintiff of Failure to Register

(a) Failure of plaintiff to register with the Commission by December 1, 1935, as required by Section 4 (b) of the Act, gives rise to the severe and excessive penalties provided by Section 29 of the Act as follows:

"Sec. 29. Any person who willfully violates any provision of this title * * * shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000: * * *"

(b) In addition, Section 4 (a) of the Act purports to make it unlawful, after December 1, 1935, while plaintiff still remains unregistered as aforesaid, for plaintiff

"(1) to sell, transport, transmit, or distribute, or own or
26 operate any utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy in interstate commerce;

"(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

"(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any

means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

"(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

"(5) to engage in any business in interstate commerce; or

"(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5)."

(c) If plaintiff, while still unregistered as aforesaid, does any of the acts enumerated in (1) to (6) above, the Act purports to inflict severe and excessive penalties, as set forth above, for each such act. As heretofore in paragraph IV alleged, plaintiff, in the exercise of its lawful corporate powers, controls securities of certain "subsidiary companies" which, as incidental to their business, own and operate utility assets for the transmission of electric energy in interstate commerce, and which do or may do other acts described in Section 4 (a) of the Act. Section 4 (a) (6) of the Act purports to make it unlawful for plaintiff, while unregistered after December 1, 1935, to own, control, or hold with power to vote securities of such "subsidiary companies" and in consequence the Act purports to subject plaintiff after December 1, 1935 to the severe and excessive fines and penalties hereinabove enumerated.

27 (d) Section 26 (b) of the Act provides in part that "every contract * * * the performance of which involves * * * a continuance of any ownership or practice in violation of any provision of this Title * * * shall be void" as to the rights of any persons who, in violation of the Act, engaged in the performance of any such contract and as to the rights of any person who, although not a party to the contract, had acquired such rights with actual knowledge of the contract being in violation of the Act. In consequence, failure of plaintiff to register with the Commission by December 1, 1935 will not only subject plaintiff to the severe and excessive fines and penalties provided by section 29 of the Act, but also the provisions of said Section 26 (b) will cast a substantial and immediate cloud upon the lawful exercise by plaintiff of the powers resulting from its ownership and control of securities of its "subsidiary companies."

(e) Failure of plaintiff to register with the Commission as required by Section 4 (b) of the Act, by December 1, 1935, makes it unlawful for plaintiff after December 1, 1935 to do any of the acts specified in Section 4 (a) of the Act and hereinabove enumerated. Such failure of plaintiff to register, as well as the doing while unregistered of any of said acts, will subject plaintiff, under the Act, to such severe, excessive, and unreasonable penalties as to destroy and confiscate its property and the property of its debentureholders and stockholders.

(f) It is essential to the business of plaintiff and the proper management of its assets and affairs for plaintiff to be free to engage in some or all of such activities which the Act would prohibit to plaintiff upon its failure to register. Moreover, plaintiff has no power to dictate to any of its "subsidiary companies" as to how the business of such company shall be conducted, so long as the directors of such company are properly managing its affairs. Should plaintiff so dictate, in a manner contrary to the interests of such company, plaintiff would be guilty of a violation of law and if the directors of any such "subsidiary company" permitted plaintiff to dictate in a manner contrary to the interests of such "subsidiary company" such directors would be guilty of a violation of the law of the state of incorporation of such "subsidiary
28 company." Moreover plaintiff has no control of its "subsidiary companies" in which it holds less than a majority interest in the voting securities. Section 4 (a) (6) of the Act, therefore, which purports to make it unlawful for plaintiff to "own, control, or hold with power to vote" any security of a subsidiary company that does any of the acts enumerated in paragraphs (1) to (5) inclusive of said Section, either calls for plaintiff to assume unlawful and dictatorial power over its subsidiaries as to the methods or kinds of business which they shall conduct, or else makes unlawful an otherwise lawful act of plaintiff, because of acts of others over which acts plaintiff has no control and the doing of which acts plaintiff is powerless to prevent.

(g) It is impossible for plaintiff to comply with the provisions of said Section 4 (a) of the Act, in that, among other things, said Section of the Act forbids plaintiff the ownership of a very substantial part of its assets while at the same time it deprives plaintiff of the only practicable way of divesting itself of such assets. If plaintiff be validly prohibited from engaging in the activities specified in said Section 4 (a) of the Act and hereinabove enumerated, plaintiff will have no practical alternative to dissolving and winding up its affairs, and at the same time the Act purports to deprive it of the only practicable means of effecting such dissolution and winding up, namely by the distribution or public offering for sale of all or a large part of the securities owned by it, in order that it may pay off its own senior security holders, all to the great, immediate and irreparable damage and injury of plaintiff, its debenture-holders and stockholders.

XIII

Theatened Acts of Defendants

(a) Defendants James M. Landis, George C. Matthews, Robert E. Healy and James D. Ross, as members of the Securities and Exchange Commission, are required by the terms of the Act, and they are asserting their authority and are threatening under color of said Act, to exercise all the duties and powers necessary to

enforce and administer the Act, to issue rules, regulations and orders thereunder and to take such steps and institute such proceedings as to them may seem desirable for the administration and enforcement of the Act and for the enforcement of penalties for violation of the Act; defendant Homer S. Cummings, as the duly qualified and acting Attorney General of the United States, is invested with the duty of taking such steps and instituting such proceedings as may be necessary to enforce the laws of the United States and, in addition, by the express terms of Section 18 (f) of the Act, said defendant, as Attorney General, is invested with discretion to institute appropriate criminal proceedings under the Act; defendant, James A. Farley, as the duly qualified and acting Postmaster General, is invested with the duty of superintending generally the business of the Post Office Department, including the use of the mails, and of superintending generally the enforcement of all laws relating to the postal service.

(b) Plaintiff is informed and believes, and on such information and belief alleges, that the defendants herein named are threatening to and will cause civil proceedings to be instituted against plaintiff, by reason of plaintiff's failure to register under the Act, or if, while unregistered, plaintiff does any of the acts specified in Section 4 (a) of the Act and hereinabove enumerated; and that the defendants may, by reason of plaintiff's failure so to register, seek to deprive plaintiff of the use of the mails and of other means and instrumentalities of interstate commerce for purposes wholly lawful and proper apart from the prohibitions of the Act; and that by reason of plaintiff's failure to register as aforesaid, the defendants may, in their discretion, also cause to be instituted and prosecuted repeated criminal actions against plaintiff, its officers, directors, agents, and employees whereby a multiplicity of suits and proceedings will ensue, the business of plaintiff will be interfered with, damaged, and crippled, and plaintiff, its debentureholders, and its stockholders will suffer great, immediate, and irreparable damage and injury.

XIV

The Act is a Present Cloud on Plaintiff's Title to Its Investments

(a) By reason of the matters and things hereinabove alleged the Public Utility Holding Company Act of 1935 constitutes a present and substantial cloud and encumbrance upon plaintiff's title to its investments lawfully acquired, owned and held, and a present and substantial impairment of plaintiff's right to freedom of contract and to the enjoyment of plaintiff's property, and said Act presently and immediately injures and destroys plaintiff's credit and the value of plaintiff's properties and securities, and plaintiff is thereby subjected to great, immediate, and irreparable injury and loss.

(b) An actual controversy has arisen between the plaintiff and defendants, in which the defendants assert and propose and threaten to exercise their purported authority to regulate, control, manage, prohibit, dismember, and destroy the business, affairs, properties, and rights of plaintiff, under the provisions of said Act, and in which plaintiff denies that defendants have any such lawful authority and refuses to submit thereto.

XV

Necessity for Equitable Relief

Unless relief be found in equity and by the injunctive process of this Court, plaintiff's failure to register with the defendant Commission, as required by Section 4 (b) of the Act, will result in a multiplicity of suits against plaintiff and its "subsidiary companies" and a multiplicity of prosecutions of their officers and agents, in many different jurisdictions, by reason of which, plaintiff, its "subsidiary companies" and their said officers and agents, and each of them, will suffer great, immediate, and irreparable damage and injury; plaintiff, its "subsidiary companies" and their said officers and agents may be subjected to excessive and unusual fines, penalties, and forfeitures; the vested rights of plaintiff and its "subsidiary companies" in property now lawfully owned, controlled, and operated by them will be impaired, their freedom of contract destroyed or greatly interfered with, a cloud will be cast upon the title to use, enjoy, and exercise their rights of lawful ownership in their valuable properties as conferred by the respective States of their incorporation, and said properties will be appropriated without due process of law and taken for public use without just compensation, and they and each of them will be denied the equal protection of the laws and compelled to suffer great, immediate, and irreparable damage and injury under a void and unconstitutional statute. Plaintiff, having no plain, adequate, and complete remedy at law in the premises, can only obtain adequate and
31 effective relief in a suit of this nature administered in a Court of Equity.

Wherefore, reserving the right hereafter to apply for temporary injunctive relief, plaintiff prays:

(1) That defendants and each of them and their successors in office and all those acting or claiming to act under their authority or by their direction be permanently restrained and enjoined from attempting by any means whatsoever to compel compliance by plaintiff with said Act or to enforce the provisions of said Act against plaintiff, from issuing against plaintiff or making applicable to plaintiff any order, rule, or regulation under said Act, from instituting or causing to be instituted against plaintiff or its directors, officers, agents, or employees any prosecution, action, or other proceedings for any alleged violation of said Act or of any order, rule,

or regulation under it, and from requiring or attempting to require plaintiff or any of its "subsidiary companies" to comply with any provision of said Act or of any order, rule, or regulation under it; and that said Act and each and every provision thereof be adjudged unconstitutional, void, and of no effect.

(2) That a judgment be entered under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stat. 955, 28 U. S. C. A. § 400), declaring that the Public Utility Holding Company Act of 1935, being Title I of an Act of Congress, approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" violates the Constitution of the United States, and that said Act and each and every part thereof is invalid, null, and void.

(3) That plaintiff may have such other and further relief as may to the Court seem just and equitable.

JOHN C. HIGGINS,
48 Wall Street, New York, N. Y.
JOHN S. FLANNERY,
Hibbs Building, Washington, D. C.,
Attorneys for Plaintiff.
SULLIVAN & CROMWELL,
48 Wall Street, New York, New York.
MCKENNEY, FLANNERY & CRAIGHILL,
Hibbs Building, Washington, D. C.,
Of Counsel.

32 [*Duly sworn by James F. Fogarty, jurat omitted in printing.*]

The Clerk will please file and issue the writ of subpoena to all of the defendants.

JOHN S. FLANNERY,
Attorney for Plaintiff.

In Supreme Court of District of Columbia

Motion to stay proceedings

Filed December 7, 1935

In Equity. No. 60,136

* * * * * * *

The defendants in the above-entitled causes respectfully represent to this Honorable Court as follows:

1. The bills of complaint herein seek to enjoin the enforcement of the Public Utility Holding Company Act of 1935 (Public No. 333, 74th Congress, Title I), upon the ground that the said Act is unconstitutional.

2. There have been filed in at least ten district courts of the United States at least forty-eight bills of complaint on behalf of 147
33 plaintiffs, all of which similarly seek to enjoin the enforcement of the said Act, on the ground that it is unconstitutional.

3. The Government is anxious to secure an early determination of the constitutionality of said Act. To that end the Securities and Exchange Commission, pursuant to its duty under the Act, has already instituted a civil suit in the Southern District of New York against Electric Bond and Share Company and five of its principal subsidiary holding companies. This suit of the Securities and Exchange Commission against Electric Bond and Share Company, et al., will be prosecuted with all due diligence to secure from the Supreme Court promptly an authoritative determination of the validity of the essential features of the Act. No public interest will be served by pressing for a decision of this issue in a multitude of suits. On the contrary, such a course of action will tend to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim.

Wherefore, the defendants respectfully move this Honorable Court to stay all the proceedings herein relating to the validity of the Public Utility Holding Company Act of 1935 until the validity of said Act has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated.

HOMER S. CUMMINGS.
Attorney General of the United States.
JOHN J. BURNS.
General Counsel,
Securities and Exchange Commission.
ROBERT E. KLINE, JR.,
Attorney for Defendants.

34 In Supreme Court of District of Columbia

Answer of plaintiff to defendants' motion for a stay, etc.

Filed December 12, 1935

* * * * * * *

Plaintiff, The North American Company, in response to the Motion filed herein and served upon its counsel of record December 7th, 1935, requesting a Stay of proceedings in the above entitled cause involving the validity of the Public Utility Holding Company Act of 1935 "until the validity of said Act has been determined by the Supreme Court of the United States in the case of Securities and

Exchange Commission vs. Electric Bond and Share Company et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated", respectfully says:

First. That this Court has no discretionary power or jurisdiction to grant the stay requested for the reasons that, as hereinafter in Paragraphs Second and Third more fully set out, the issues of fact and law involved in the case at bar and those in said Electric Bond and Share Company case are so dissimilar and the operations of the two companies and their respective subsidiaries are so different that, as plaintiff has been informed by its counsel and believes and alleges, a decision in said Electric Bond and Share Company case will not settle the questions of fact and law raised by the bill of complaint filed in the case at bar or determine the rights of this plaintiff under the Constitution of the United States.

Second. It is apparent from a comparison of the Government's bill of complaint in the Electric Bond and Share Company case (a copy of which is attached hereto as Exhibit A) with the bill of complaint filed by the plaintiff herein that the issues in the two cases are entirely dissimilar.

The Government's bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of the entire Act, but only of two subsections of one section of the Act, neither of which relates to any of the regulatory or other drastic provisions of said Act. The bill of complaint against the Electric Bond and Share companies requests only (1) that the defendants be compelled to register with the Commission under Section 4 (b) of the Act and (2) that they be enjoined from engaging in certain of the activities enumerated under Section 4 (a) of the Act. The activities so enumerated consist of selling, transmitting or distributing, or owning or operating utility assets for the transmission or distribution of gas or electricity in interstate commerce and using the mails or instrumentalities of interstate commerce to negotiate or perform service, sales or construction contracts or to engage in any business of interstate commerce or to own or control securities of a subsidiary company that does any of the foregoing, unless the company registers with the Commission.

Section 32 of the Act provides that—

"If any provision of this title or the application of such provision to any person or circumstances shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

Plaintiff has been informed by its counsel and believes and alleges that the Government will contend that the issue of the constitutionality of Sections 4 (a) and (b), which is the sole constitutional issue involved in the Electric Bond and Share Company case, is a separable and distinct issue from the constitutionality of the remaining provi-

sions of the Act, and that consequently a determination by any court of the constitutionality of Sections 4 (a) and (b) as applied to the Electric Bond and Share Company group cannot, under Section 32 of the Act, affect or determine in any manner the constitutionality of the other provisions of the Act as applied to the plaintiff company in the case at bar. Thus, the bill of complaint against the Electric Bond and Share companies does not raise for the determination of the Court the most vital and important issues which are raised by this plaintiff in the case at bar.

The Government's complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Section 11 (b), the "death sentence" provisions of the Act, which give to the Commission an almost uncontrolled discretion to require plain-
36 tiff to dispose of its investments, direct or indirect, in the stocks and securities of public utility companies, holding companies, and in companies not engaged in business either as public utility companies or holding companies, and under which the Commission is empowered and directed to paralyze and dismember plaintiff's business and to enforce its complete disintegration and destruction.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Sections 6 and 7 of the Act, which give to the Commission complete and unrestricted control over the issue and sale of securities of the plaintiff, which would seriously interfere with and hamper the board of directors and officers of plaintiff in the proper conduct of plaintiff's business.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Sections 9 and 10 of the Act, giving to the Commission complete and unlimited control over future acquisitions of property by the plaintiff, or of the provisions which prohibit plaintiff from acquiring any property or securities which will not tend toward the development of an "integrated public utility system."

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of other sections of the Act which give the Commission complete and unlimited control over practically every phase of plaintiff's business, including the declaration of dividends, loans to subsidiaries and other internal corporate affairs.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of the numerous provisions of the Act giving the Commission practically unlimited powers to make investigations of the plaintiff's affairs and to require compliance with the most detailed accounting rules, submission of reports and other papers of the most comprehensive and detailed character with respect to practically every phase and aspect of plaintiff's business, including those which have not the remotest connection with or any effect on interstate commerce.

The constitutionality of these provisions of the Act is directly raised in the case at bar but is not raised at all in the Government's bill of complaint against the Electric Bond and Share companies,
37 and these, among others, are the provisions of the Act which threaten the imminent disruption and destruction of plaintiff's business and which will result inevitably in irreparable loss and damage to plaintiff and its stockholders.

Third. The Government's bill of complaint against the Electric Bond and Share companies clearly recognizes that the controlling issue in that case is one to be determined on the basis of specific facts relating to the character of that particular Company's activities and the nature of its business. It contains very detailed and full statements of the activities and business of the Electric Bond and Share group of companies, particularly in an attempt to show that those defendants are engaged in interstate commerce. It alleges that the defendant Electric Bond and Share Company is the top holding company of the five additional defendants, American Gas and Electric Company, American Power and Light Company, Electric Power and Light Corporation, National Power and Light Company, and United Gas Corporation, these five companies being intermediate holding companies, all controlled by Electric Bond and Share Company; that the American Gas and Electric Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Virginia, West Virginia, Ohio, Kentucky, Tennessee, North Carolina, Michigan, Indiana, Pennsylvania, and other states; that the American Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Oregon, Washington, Idaho, Montana, Nebraska, Iowa, and other states, and by which gas is transmitted in interstate commerce into or from Oregon, Washington, Minnesota, Wisconsin, New Mexico, Arizona, and other states; that the Electric Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Louisiana, Mississippi, Arkansas, Tennessee, Idaho, Oregon, Nevada, Utah, and other states; that the United Gas Company system has several public utility subsidiary companies, operating
38 in many states and owning and operating utility assets by which gas is transmitted in interstate commerce into or from Florida, Alabama, Mississippi, Louisiana, Texas, Republic of Mexico, and other states; that the National Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Pennsylvania, North and South Carolina, Tennessee, Alabama, Texas, New Jersey, New York, Virginia, and other states.

The Government's bill of complaint in that case further alleges that the Electric Bond and Share Company and American Gas and Electric Company so dominate and control all of their subsidiary companies engaged in such interstate transmission of electricity and gas that those companies are themselves, in their own corporate capacity, engaged in the transmission in interstate commerce of electric energy and manufactured and natural gas.

The bill of plaintiff, on the other hand, shows that the public utility subsidiary companies of plaintiff comprise in the main, electric properties, with some small amount of gas and transportation properties centered only in Cleveland, Milwaukee, St. Louis, Washington, Detroit, San Francisco, Central Illinois, Central Iowa, and parts of Kansas; that none of the public utility companies in which plaintiff owns stock own or operate utility assets for transmission of electric energy in interstate commerce, and that the subsidiary companies of plaintiff which do own or operate utility assets for such transmission engage in such activities merely as an incidental part of their predominant intrastate business.

The Government's bill of complaint against the Electric Bond and Share companies further alleges that Electric Bond and Share Company has negotiated, entered into, and is performing contracts with operating subsidiaries of American Power and Light Company, Electric Power and Light Corporation, and National Power and Light Corporation. The bill enumerates thirty-one detailed matters of operation and management covered by the alleged contracts. It is alleged that these contracts "contemplate and cause and their performance will involve and depend upon, continuance and regular intercourse in interstate commerce and frequent transportation
39 in interstate commerce of information in the form of books, periodicals, apparatus, papers, pamphlets, reports and forms by and between the officers of the Electric Bond and Share Company in New York City and the client subsidiary companies in 31 states; that in these contracts defendant, Electric Bond and Share Company, undertakes to send as frequently as may be necessary from its principal offices in New York to the companies served, sponsors, operating specialists, and engineers, to confer, advise, and assist with respect to the problems of the operating companies, and that this obligation contemplates and its performance will necessitate transportation in interstate commerce * * * that Electric Bond and Share Company in the form of its wholly owned subsidiary, Phoenix Engineering Corporation, will regularly purchase and ship construction goods in interstate commerce as contemplated in, and caused by, the construction contracts negotiated and entered into as hereinabove set forth * * * that the rendering of the interstate services as above alleged and compensation in the manner alleged will constitute business in interstate commerce."

In substance, the same allegation is made with respect to the defendant American Gas and Electric Company.

As contrasted with the extensive and comprehensive services thus alleged to be rendered by Electric Bond and Share Company and American Gas and Electric Company to their subsidiaries, the bill of plaintiff in the case at bar shows that plaintiff is a party to no construction, sales or service contracts with any of its subsidiary companies and renders or performs no such services for its subsidiaries.

The Government obviously regards these facts as material and necessary to any judicial determination of the constitutionality of the Public Utility Act of 1935 as applied to the Electric Bond and Share companies. If the Government did not so regard them it would not have devoted the greater part of its long and complicated bill of complaint to the allegation of such facts in a case which it alleges it is prosecuting for the purpose of having such constitutionality determined. The conclusion is inevitable that the motion to stay must be denied in the case at bar, since there are in this case no such comparable facts.

40 Fourth. Since the Act may be held constitutional as to certain holding companies and not as to others, depending on the character of the activities of the particular holding company and the nature of its business, the extent and character of its control and domination over its subsidiaries, and the extent to which the company and its subsidiaries are engaged in interstate transmission of services or of electric energy or gas, then it is vitally important both to the industry and to the Government that the litigation being carried forward should not be limited to the single Electric Bond and Share Company case, which presents a situation which is not at all typical of the industry generally, and which in many important respects is very different from the situation presented by the history and activities and corporate set-up of the holding company system of the plaintiff in the case at bar and of many other holding company systems.

Fifth. The Government certainly has no right, legal or equitable, to request special favors of this Court, which require this Court to ignore the rights of other litigants. The Government is not and cannot be entitled to pick its own particular case, in a court of its own choosing, and involving only one or two narrow issues of its own devising, and then have all other cases in all other courts stayed, while the Government takes a year or more to carry its hand picked case to the Supreme Court, leaving all other companies, with other issues and rights, of vital importance to them and their stockholders, to wait indefinitely for a determination of their special and individual rights.

Sixth. Plaintiff is advised by counsel and avers that it has a statutory and constitutional right to have the questions of fact and law raised in the complaint in the case at bar speedily determined and conclusively adjudicated by the Courts of this jurisdiction and the Supreme Court of the United States, without reference to what may be done by the courts of some other jurisdiction in a different

ease involving different parties and facts and issues, and that any stay of its right to such prompt ascertainment of its constitutional and property rights in this proceeding will cause plaintiff great and irreparable loss and damage, will deprive it of a speedy trial
41 and adjudication as guaranteed by the Constitution of the United States, and will deny to it due process of law and the equal protection of the laws.

Seventh. Plaintiff further says that the ends of justice require that it be allowed to proceed with this case in the orderly manner provided by the rules of this Court, and because of the great importance of the questions and the immense pecuniary interests involved, it offers to cooperate with the defendants in every possible way to procure the hearing and determination by the courts of the issues of fact and law which may be raised in a representative group of test cases, in order that the constitutionality of the Public Utility Holding Company Act of 1935 may be promptly presented and determined.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for Plaintiff.
SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.,
Of Counsel.

[*Duly sworn to by James F. Fogarty, jurat omitted in printing.*]

42 In Supreme Court of District of Columbia

Opinion on motion for stay

* * * * * * *

The defendants in these cases have moved for a stay of proceedings pending the determination by the Supreme Court of the United States of the validity of the Public Utility Holding Company Act of 1935 in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., brought by the former in the District Court of the United States for the Southern District of New York. It appears that in addition to the present suits now pending in this Court brought to enjoin the carrying out of the provisions of that act at least fifty more have been brought in other District Courts. Counsel seem to agree that these latter cases are defective for want of jurisdiction, and that it is likely that if dismissed in the Courts where they are now pending they will be filed in this Court.

The defendants urge that it is practically impossible for them to defend all these suits with the care and ability with which they should be defended; that the plaintiffs are represented by counsel who are specialists and experts in the matters involved in these cases; that the government could with difficulty obtain an adequate number

of specially qualified counsel to handle these cases: that the constitutionality of the Act in question will be determined in the Electric Bond and Share case, with reasonable speed and in a suit authorized by the Act, in which no question of jurisdiction can arise.

The plaintiffs oppose the motion upon the grounds that the Court is without power to grant the stay: that if the granting of the stay were a question of discretion, it would be an abuse of discretion to grant it: that many of the questions as to the constitutionality of the Act involved in these cases are not involved in the Electric Bond and Share case, and that even if the defendants were temporarily enjoined the plaintiffs would in the meantime suffer irreparable injury by the existence of this act upon the statute books, which would affect the validity of their contracts, their transfer of stocks, and other similar matters.

The bills in these cases, which were filed a few days later than the Electric Bond and Share case with the exception of the
43 North American Company case which was filed on the same day, seek to enjoin the defendants from attempting to compel the plaintiffs to comply with this act or to enforce any of its provisions against them, or making applicable to the plaintiffs any rule or regulation under the Act, or instituting any prosecution or action against the plaintiffs, for any violation of the Act or order under it and that the Act be declared unconstitutional in toto.

Before any of these suits were filed the Securities and Exchange Commission issued regulations expressly permitting a holding company when registering to reserve any legal or constitutional right and to stipulate that its registration should be void and of no effect in the event that such a reservation should be judged invalid or ineffective: the Attorney General and the Securities and Exchange Commission announced that the Commission would take the initiative to test the Act in a civil suit, that until the validity of the Act had been determined by the Supreme Court in such a civil suit neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act, and that even after such determination they would not seek to exact penalties for earlier offenses: and the Postmaster General announced that even if he had the authority, he would not exclude any company from using the mails because of any violation of the Act pending the judicial determination of its validity by the Supreme Court.

In addition the defendants have offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case.

As to the power of the Court to grant the stay I have little question and I think it is within the discretion of the Court. Mr. Chief Justice Hughes, in the case of Enelow v. N. Y. Life Insurance Co., 293 U. S. 379, 381, referred to the exercise of equitable jurisdiction in granting or refusing an injunction and distinguished it from a mere "stay of proceedings which a court of law, as well as a court of

equity, may grant in a cause pending before it by virtue of its inherent power to control the progress of the cause so as to maintain the orderly processes of justice."

This is not an attempt to enjoin a multiplicity of suits, nor a stay as a matter of right by reason of a former suit pending. The
44 Court may grant a stay, or extend the time for pleading, by reason of the absence or illness of parties or counsel, the convenience of the Court, the fact that the issues in a case may be simplified by decisions in other suits, and it would, I think, be impossible to define all the conditions which might justify a Court, in its discretion, in staying the further progress of a case, not finally, but temporarily.

In the instant case the relief sought by the plaintiffs is first a relief by injunction against the defendants, and second a declaratory judgment to the effect that the Public Utility Holding Company Act violates the Constitution of the United States and that the Act and each and every part thereof is invalid, null, and void.

As to the injunctive relief sought the defendants in effect consent to a temporary injunction embracing the same injunctive relief which the plaintiffs seek upon a final hearing. So long as this temporary injunction is in force each of the plaintiffs will obtain the relief sought by injunction. They object to this, however, upon the ground that they will in the meantime suffer irreparable loss by the existence of the statute, resulting from the doubt and uncertainty as to the legality of practically everything that they may do in the ordinary and usual course of their business after December 1, 1935, resulting, as they claim, in an almost complete paralysis of their corporate activities. They claim that a decision of the Electric Bond and Share case will not solve the questions raised in the suits brought by them in this Court for the former involves only a few provisions of the Act, while the latter cover the Act in its entirety, although the plaintiffs claim in their bills that the different parts of the Act are inseparable and if void in part, it is void in toto. They seek a declaratory judgment that the Act be declared void, not in so far as it relates to the interests of the plaintiffs, but apparently as a general or abstract proposition. But as well said by counsel for the plaintiffs in their brief:

"* * * Courts do not declare statutes constitutional or unconstitutional as such. The judicial function is to determine whether or not under the facts proven at the trial, the application of the legislative enactments to the litigant before the Court invades his constitutional rights."

I do not understand that under the declaratory judgment
45 acts, an act of Congress is a res, and that the Courts determine its constitutionality as if the proceedings were one in rem. If the highest Court declares in any particular case that an act of Congress is beyond the powers granted by the Constitution, that

opinion will be followed by the lower Courts in every case that comes before them. Apart from the injunctive relief sought in this case it is difficult to see with whom any remaining controversy may be, unless it might be with the United States, and in that event the Court would have no jurisdiction.

If the defendants, as they state they probably will do, in the event these suits are not stayed, permit them to go by default, it is difficult to see how the plaintiffs would be any better off than if the suits were stayed. If this Court should hold the Act unconstitutional, the final relief would afford them little advantage over the temporary relief now offered them. It would seem that injunctions against the present defendants might not bind their successors in office and if the Supreme Court should afterwards hold the Act constitutional, their success in the instant suits would avail them little. Ex Parte La Prade, 289 U. S. 444.

Even a consent degree may be modified in invitum where the situation of the parties and conditions have so changed as to render the enforcement of the decree inequitable. United States v. Swift & Company, 286 U. S. 106. And in any event a bill of review for error of law apparent on the record would lie. Rudolph v. Hunt, 52 App. D. C. 343. The plaintiffs seek an early decision by the Supreme Court but they could not appeal from a decree of this Court in their favor, and as said before, I cannot see how their real interests will not be protected by the temporary injunction to which the defendants offer to submit. A decision by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved.

The plaintiffs have declined to register with the Securities and Exchange Commission under sec. 5 of the Act, although the Commission has issued regulations permitting a holding company, when registering, to reserve any legal or constitutional right, and to stipulate that its registration would be void, if the reservation should be judged ineffective; and it would seem that they might have registered irrespective of this regulation, without impairing their constitutional rights. As said by Judge Coleman in his opinion in the American States Public Service Company case in the United States District Court at Baltimore:

"Of course, although registering under the Act, the Trustees might still preserve any constitutional right." Citing Union Pacific R. R. Co. v. Public Service Commission, 248 U. S. 67, and Power v. Saunders, 274 U. S. 490, the latter case being especially in point.

The offer of the plaintiffs to a trial of one or two of the instant cases and suspending proceedings in the others has not been consented to by the defendants. They, however, cannot answer for the fifty odd cases now pending in other courts, which, it seems probably

will be transferred to this Court. I think that the plan proposed by the defendants would give all the plaintiffs all the protection needed pending a decision by the Supreme Court and save great amount of labor, time and expense.

Upon the whole I am of the opinion that the motion of the defendants should be sustained, conditioned upon a diligent and active prosecution of the Electric Bond and Share case. In view of their assurances given before the filing of these suits, however, it would hardly seem necessary to issue a formal injunction, unless the plaintiffs insist upon it.

It might be added that I have been informed that the appeal in the American States Public Service Company case will be shortly argued in the Court of Appeals of the fourth Circuit and a decision by the Supreme Court on the constitutionality of the Act may be had in that case some time before any of the other cases involving this act reach the Supreme Court. The opinion of Judge Coleman in that case, holds the Act unconstitutional and void in all respects, and if considered in the nature of a declaratory judgment might render it unnecessary for other Courts to enter similar judgment pending a decision by the Supreme Court.

JENNINGS BAILEY,
Justice.

47 In Supreme Court of District of Columbia

Order staying further proceedings herein

Filed January 9, 1935

* * * * * * *

This cause coming on to be heard upon motion of the defendants to stay further proceedings herein filed December 7, 1935, the Court having considered the pleadings and the arguments of counsel, and briefs having been submitted herein, it is this 9th day of January, 1936:

Ordered, adjudged and decreed, that further proceedings herein be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court in this cause filed herein the 6th day of January 1936.

JENNINGS BAILEY,
Justice.

No objection to form.

Exception to above order is hereby taken and plaintiff's intention is hereby noted to apply for a special appeal herein to the United States Court of Appeals for the District of Columbia.

J. S. FLANNERY,
Attorney for Plaintiff.

In United States Court of Appeals for the District of Columbia

January term, 1936

No. 2559, original. Equity 60,136

THE NORTH AMERICAN COMPANY, PETITIONER

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY, ETC.

Order allowing special appeal

Filed February 18, 1936

On consideration of the petition for allowance of a special appeal in the above entitled cause from the order of the
48 Supreme Court of the District of Columbia entered therein on January 9, 1936, by Mr. Justice Jennings Bailey,

It is ordered by the Court that the petition be and it is hereby granted and a special appeal allowed as prayed.

Per Mr. Chief Justice MARTIN.

February 17, 1936.
A true copy.
Test:

HENRY W. HODGES,
Clerk.

By MCNCURE BURKE,
Deputy Clerk.

[SEAL]

In Supreme Court of District of Columbia

Notice of motion

Filed February 19, 1936

* * * * * * *

Please take notice that at 9:30 o'clock on February 25, 1936, the defendants James M. Landis, George C. Mathews, Robert E. Healy, James D. Ross, Homer Cummings, and James A. Farley will present the accompanying motion to Justice Bailey in Chambers.

HOMER CUMMINGS,
Attorney General of the United States.
J. L. R.
JOHN J. BURNS,
General Counsel, Securities and Exchange Commission.
J. L. R.

Service of a copy of the aforesaid motion with the accompanying affidavit is hereby acknowledged.

_____.

Dated February —, 1936. Washington, D. C.

In Supreme Court of District of Columbia

Motion as to affidavit and exhibits

Filed February 19, 1936

* * * * * * *

The defendants James M. Landis, George C. Mathews, Rob-
49 ert E. Healy, James D. Ross, Homer Cummings, and James A. Farley respectfully represent to this Honorable Court:

1. That on February 17, 1936, the United States Court of Appeals for the District of Columbia allowed a special appeal from the order of this Court, entered on January 9, 1936, staying the proceedings in the above entitled cause upon the terms and conditions set forth in the opinion of this Court filed January 6, 1936.

2. That the facts set forth in the accompanying affidavit of Homer Cummings, Attorney General of the United States and one of the attorneys for the defendants, were presented to this Court at the hearing of the above entitled cause and in the printed briefs filed therein by said defendants, and that the exhibits appended to said affidavit are corroborative of the facts set forth therein.

3. That the said affidavit and exhibits are a convenient and appropriate method of incorporating in the record the facts upon which the opinion and order of this Court were rendered.

4. That there is also appended to said affidavit a copy of the answer and cross-bill filed on January 29, 1936, by the twenty-two defendants in the case of Securities and Exchange Commission v. Electric Bond and Share, et al.

Wherefore defendants move this Honorable Court to order and direct that the said affidavit together with the exhibits appended thereto be included in the printed transcript of the record.

HOMER CUMMINGS,
Attorney General of the United States.
JOHN J. BURNS,
General Counsel, Securities and Exchange Commission.

In Supreme Court of District of Columbia

Affidavit of Homer Cummings

Filed February 19, 1936

* * * * * * *

Homer Cummings, being first duly sworn on oath, deposes and says as follows:

1. He is Attorney-General of the United States and one of the attorneys for the defendants in the above entitled causes.

50 2. He makes this affidavit in support of the motion of the defendants in the above entitled causes to stay further proceedings therein until the validity of the Public Utility Holding Company Act of 1935 (herein referred to as the "Act") has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., now pending in the United States District Court for the Southern District of New York. All of the facts set forth in this affidavit with the exception of Exhibit J described in paragraph 15 were called to the attention of the Court and of opposing counsel in the briefs and oral arguments heretofore submitted on behalf of the defendants in the above entitled causes.

3. On October 9, 1935, the Securities and Exchange Commission promulgated a rule known as "Holding Company Act Rule 4", and on November 22, 1935, amended said rule. A true and correct copy of said rule, as amended, is attached hereto, marked Exhibit A and made a part of this affidavit.

4. On November 21, 1935, affiant, as Attorney General, addressed and transmitted to all United States Attorneys a letter designated as "Circular No. 2780", a true and correct copy of which is attached hereto, marked Exhibit B and made a part of this affidavit.

5. On December 7, 1935, affiant, as Attorney General, addressed and transmitted to all United States attorneys a letter designated as "Circular No. 2786", a true and correct copy of which is attached hereto, marked Exhibit C and made a part of this affidavit.

6. On November 22, 1935, the Securities and Exchange Commission issued to the newspapers for immediate release a press release known as "Release No. 22", a true and correct copy of which is attached hereto, marked Exhibit D and made a part of this affidavit.

7. On December 4, 1935, James A. Farley, Postmaster General of the United States, addressed and transmitted to all postmasters a letter, a true and correct copy of which is hereto attached, marked Exhibit E and made a part of this affidavit.

8. On November 26, 1935, the Securities and Exchange Commission filed its bill of complaint in the District Court of the

51 United States for the Southern District of New York against the Electric Bond and Share Company, American Gas and

Electric Company, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, and United Gas Corporation all of whom have their principal place of business in New York. A true and correct copy of the bill is attached hereto, marked Exhibit F and made a part of this affidavit. The Electric Bond & Share Company, controlling nearly 15% of the privately owned electric utility industry in the country, is the best known and one of the oldest of the great holding company systems, and comes in contact with the Act at more points than any other holding company system. Each of the five subsidiary systems joined as parties defendant is comparable in size to the largest of the systems of the plaintiffs in the cases before this Court. On December 21, 1935, pursuant to leave of court, the Securities and Exchange Commission filed its amended and supplemental bill of complaint in said cause and included sixteen additional subsidiaries as defendants. A true and correct copy of said amended bill is attached hereto, marked Exhibit G and made a part of this affidavit. Affiant is informed and believes, and, therefore, states that all of the allegations contained in said amended and supplemental bill of complaint are true.

9. Prior to December 12, 1935, forty-nine proceedings had been filed, and were on said date pending in the District Courts of the United States for thirteen districts seeking an adjudication of the constitutionality of the Public Utility Holding Company Act of 1935. Forty-four such proceedings were filed by electric and gas utility holding companies against members of the Securities and Exchange Commission and other officers of the United States, seeking to enjoin the enforcement of said Act against the respective plaintiffs, and, in most of the cases, further seeking declaratory judgments declaring said Act to be unconstitutional. Five of said proceedings involved litigation between electric or gas utility holding companies, or their receivers or trustees, and stockholders or other private litigants in which proceedings a declaration of the unconstitutionality of said Act is sought. Attached hereto, marked Exhibit H, is a
52 schedule setting forth the names of the plaintiffs in said proceedings, the court in which each such proceeding is pending, and the date upon which the bill of complaint therein was filed.

10. On November 29, 1935, Messrs. Winthrop, Stimson, Putnam & Roberts, attorneys of counsel for Tennessee Electric Power Company, one of the plaintiffs in the above entitled causes, addressed and transmitted to affiant a letter, a true and correct copy of which is hereto attached, marked Exhibit I and made a part of this affidavit.

11. The following facts appear from the so-called Splawn Report (report of the Committee on Interstate and Foreign Commerce of the House of Representatives, made pursuant to H. Res. No. 59, 72nd Cong., 1st Sess., and H. J. Res. No. 572, 72nd Cong., 2nd Sess., House Report No. 827, Part 3):

(a) The North American Company, one of the plaintiffs in the above entitled causes, owns all or substantially all of the voting stock of the North American Edison Company, its principal subholding company, which, in turn, owns all of the voting stock of Union Electric Light and Power Company. Union Electric Light and Power Company, through itself and its subsidiary companies, most of which are wholly owned, transmits power generated at the Keokuk Dam in the State of Illinois, in interstate commerce, into the States of Missouri and Iowa. The North American Company through intermediate holding companies, also controls other companies which transmit substantial amounts of electric energy across state lines. About one-fifth of the total quantity of electric energy generated by public utility companies which form a part of the North American Company System is sold in interstate commerce. (Splawn Report, Part 3, page 720.)

(b) Subsidiary operating companies of the United Light & Power Company transmit considerable quantities of electric energy and manufactured and natural gas in interstate commerce. (Splawn Report, Part 3, page 930.)

(c) Operating subsidiaries of the American Water Works and Electric Company transmit substantial quantities of electric energy in interstate commerce. (Splawn Report, Part 3, pp. 50–51.)

(d) The American Water Works and Electric Company and the United Light and Power Company, respectively, have entered into service, sales and construction contracts (as defined in the
53 Public Utility Holding Company Act of 1935) with subsidiary operating companies, and North American Light and Power Company, a subsidiary holding company of The North American Company, has entered into service, sales and construction contracts with its subsidiaries. (Splawn Report, Part 3, page 52 et seq., page 923 et seq., page 743.)

12. West Penn Electric Company, which is a subsidiary of American Water Works and Electric Company, and controls all of the electric utility properties in the American Water Works and Electric Company System, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the District of Maryland to enjoin the enforcement of the Act. North American Edison Company and North American Light & Power Company, two large intermediate holding company subsidiaries of the North American Company, have instituted proceedings against the Securities and Exchange Commission and others in the United St[illegible] District Court for the District of Delaware to enjoin the enforcement of the Act. The New Empire Corporation and Central States Electric Company, holding companies which are affiliates of the North American Company and included in the North American System have not filed any independent proceedings or joined in any proceedings filed by subsidiary companies in the system.

13. Commonwealth & Southern Corporation, of which the Tennessee Electric Power Company, one of the plaintiffs in the above entitled causes, is a subsidiary, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the District of Delaware to enjoin the enforcement of the Act.

14. The Columbus Railway Power and Light Company, a subsidiary of the United Light & Power Company, one of the plaintiffs in the above entitled causes, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the Southern District of Ohio to enjoin the enforcement of the Act.

15. On January 29, 1936, after the opinion and order in this cause, the Electric Bond and Share Company and twenty-one other defendants filed their answer and crossbill in the case of Securi-
54 ties and Exchange Commission v. Electric Bond and Share et al., a true and correct copy of which is attached hereto, marked Exhibit J.

HOMER CUMMINGS.

Subscribed and sworn to before me this 19th day of February 1936.

[SEAL]

UGO J. A. CARUSI,
Notary Public.

Exhibits

Filed February 19, 1936

Copy

Exhibit A to affidavit

Rule 4. Reservation of constitutional or legal rights.—Any person filing, signing, or certifying to, any notification, statement, application, declaration, report, or other document pursuant to the Act, the Rules and Regulations, or any order of the Commission under the Act or the Rules and Regulations, may include therein in behalf of such person or of any other person affected thereby an express reservation of, and refusal to waive, any constitutional or legal rights.

If the reservation or refusal to waive asserted by or on behalf of any such person or persons shall be held invalid or inoperative by any court of competent jurisdiction, such filing, signing, or certifying may, at the option of any such person or persons, be deemed to have been void and of no effect from any date specified in written notice given to the Commission, by or in behalf of such person or persons, except that the validity of transactions which otherwise might be impaired by reason of the voidance and ineffectiveness of such filing, signing, or certifying shall not be affected thereby.

The acceptance of any order, rule, or regulation, or the compliance with any provision of the Act, of the Rules and Regulations, or of any order or direction of the Commission shall not be deemed a waiver of any constitutional or legal rights.

55 *Exhibit B to affidavit*

DEPARTMENT OF JUSTICE,
Washington, D. C., November 21, 1935.

Circular No. 2780

To all United States Attorneys:

The Public Utility Holding Company Act of 1935 makes specified transactions by the use of the mails or instrumentalities of Interstate Commerce illegal for certain public utility holding companies after December 1, 1935, unless such companies are registered with the Commission.

The Edison Electric Institute, a trade organization, whose membership includes a number of utility holding companies, has announced that it has retained counsel to contest the constitutionality of the Act. Consequently, it is probable that a number of companies will fail to register under the Act.

It is, of course, not the purpose of the Government to harass the utility industry with a needless multiplicity of suits. Equally, however, there is no public interest to be served by vexing the Government with a multiplicity of injunction suits which might embarrass and harass the Government in defending the constitutionality of the Act and which might result in the presentation of the issue of constitutionality on the basis of an inadequate record or a record not fairly typical of the situations covered by the Act.

Section 18 of the Act places the duty of investigating violations of the Act upon the Securities and Exchange Commission, which may transmit evidence "to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings."

In enforcing the Act it is proposed promptly to institute civil proceedings against one or more large and important companies who may fail to register to enforce compliance with its provisions and to seek decisions from the Supreme Court sustaining the validity of the act. In the meanwhile it is not proposed to institute
56 criminal proceedings, and if later it should become necessary to institute criminal proceedings against any company, it is not the intention of this department to seek to exact penalties for earlier offenses which might unduly penalize the investors in the offending company.

In view of the foregoing, the Department suggests that you refrain from bringing or threatening to bring any criminal proceedings under the Act. If any injunction proceeding is instituted against you, you will thus be in a position to disclaim any present

threat of any criminal proceeding under such Act. Such disclaimer should be sufficient to dispose of any restraining order which may be sought against you under the authority of Spielman Motor Sales Co. v. Dodge, 295 U. S. 89, decided April 29, 1935; Sparks v. Mellwood, 74 F. (2d) 695 (C. C. A. 6th, 1934); Richmond Hosiery Mills v. Camp, 74 F. (2d) 200 (C. C. A. 5th, 1934); Campbell v. Medalie, 71 F. (2d) 671 (C. C. A. 2d, 1934); McKee v. Rudolph, 12 F. (2d) 148 (C. A. D. C., 1926); Cave v. Rudolph, 287 F. 989 (C. A. D. C., 1923).

You will promptly inform this Department, nevertheless, of any action which may be instituted in your District, whether or not you are made a party, to attempt to test the validity of the Act.

HOMER CUMMINGS,
Attorney General.

Exhibit C to affidavit

DEPARTMENT OF JUSTICE,
Washington, D. C., December 7, 1935.

Circular No. 2786

To all United States Attorneys:

(1) In Circular No. 2780, November 21, 1935, you were advised that the Government would promptly institute civil proceedings to enforce compliance with the Public Utility Holding Company Act of 1935; that in accordance with the discretion vested in the Attorney General under section 18 (f) of that Act, the Attorney General would not sanction the institution of criminal proceedings for
57 violations of the Act before the validity of the Act was judicially determined by the Supreme Court, nor would he thereafter sanction the exaction of penalties for prior offenses; and that you should refrain from bringing or threatening to bring any criminal proceedings under the Act.

(2) On November 26, the Government instituted a civil suit in the Southern District of New York against Electric Bond and Share Company and five of its principal subsidiary holding companies to enforce compliance with the Act, and shortly thereafter consented to the intervention in that suit of sixteen additional subsidiary holding companies in the Electric Bond and Share system. The major issues concerning the constitutionality of the Act, in so far as such issues may legally be raised at this time, will be promptly, effectively, and fairly tested and adjudicated in this suit.

(3) The Attorney General and the Securities and Exchange Commission have taken the position, on the authority of Union Pacific R. R. Co. v. Public Service Commission, 248 U. S. 67; Terral v. Burke Construction Co., 257 U. S. 529; Power Manufacturing Co. v. Saunders, 274 U. S. 490, that registration does not constitute a waiver

of any constitutional rights. In its Holding Company Act, Release No. 22, November 22, 1935, the Securities and Exchange Commission reiterated that "the Commission under its rule-making power expressly permits the registrant to reserve his constitutional rights", and further announced that "the Commission is prepared to go further and accept a notification that expressly stipulates that the notification of registration will at the option of the registrant be deemed void if registrant's reservation of its constitutional rights is adjudged void or ineffective."

(4) Despite the efforts of the Government to test the validity of the Act in an orderly and economical manner, and in the meanwhile to safeguard every legal and constitutional right of the private interests affected, not only have a multitude of unnecessary suits been brought against government officials, but a number of stockholders' suits have been brought against various companies with a view to testing the constitutionality of the Act in proceedings in which the Government or its officers are not even parties. In light of the action taken by the Government to safeguard the rights and interests of both registering and non-registering companies, it may be questioned whether such stockholders' suits are brought in good faith and are free from collusion as is required under Equity Rule 27 as interpreted by the Supreme Court. Corbus v. Gold Mining Co., 187 U. S. 455; Wathen v. Jackson Oil & Refining Co., 235 U. S. 635. It is true that there are cases where in the absence of collusion a stockholder has been allowed to sue to enjoin the payment of an allegedly unconstitutional tax where the company is threatening to pay the tax without protest and thereby (under the law then in force) threatening to deprive itself of any opportunity of subsequently recovering the tax. Pollock v. Farmers Loan & Trust Co., 157 U. S. 429; Brushaber v. Union Pacific Railroad Company, 240 U. S. 1. But such cases are not at all comparable to an action by a stockholder to enjoin the simple act of registration which involves no waiver of any constitutional right. The only other cases where such stockholders' suits have been permitted, Smith v. Kansas City Title and Trust Co., 255 U. S. 180, and Hill v. Wallace, 259 U. S. 44, are similarly inapplicable, for in each, if the statute challenged were unconstitutional, the action of the Directors sought to be enjoined was unlawful under state law or a clear abuse of their powers of management.

58

(5) The Government takes the position that any action by a stockholder to enjoin or to compel registration cannot bring into issue the question of constitutionality, but at most only the question of the good faith and prudent conduct of the management. The Government at the present time does not plan to intervene or take any part in any action brought by a stockholder to test the constitutionality of the Act.

(6) Inasmuch as it will in many cases be impossible for the District Attorneys to know of the existence of these suits, you are re-

quested to bring this circular to the attention of the Circuit Judges in your circuit and to the District Judges in your district so that they may be apprised of the Government's position in the event that any such stockholders' suits come before them.

HOMER CUMMINGS,
Attorney General.

59 *Exhibit D to affidavit*

For Immediate Release in Newspapers of Friday, November 22, 1935.

Securities and Exchange Commission, Washington

Holding Company Act

Release No. 22

The Securities and Exchange Commission today officially authorized the issuance of the following statement:

(1) The Public Utility Holding Company Act of 1935 makes specified transactions by the use of the mails or instrumentalities of Interstate Commerce illegal for certain public utility holding companies after December 1, 1935, unless such companies are registered with the Commission. To date the number of notifications of registration filed under the Act has been negligible. The Edison Electric Institute, a trade organization, whose membership includes many public utility holding companies subject to the Act, has announced that it has retained counsel to contest the constitutionality of the Act.

(2) Section 18 of the Act authorized the Commission to enforce compliance with the Act. And it is the purpose of the Commission to proceed promptly with the administration and enforcement of the law.

(3) However, it is the purpose of the Commission to proceed with the enforcement of the Act in an orderly and economical manner. The Commission will not harass the industry with a multiplicity of suits. And the Commission will resist any effort that may be made to vex the Government with a multiplicity of suits or to provoke litigation with a view of presenting the issue of constitutionality on the basis of an inadequate record or a record not fairly typical of the situations covered by the Act.

(4) If there is a general failure to register under the Act, the Commission will proceed promptly to bring civil proceedings against one or more large and important companies who may fail to register to enforce compliance with the Act and to seek decisions from the Supreme Court sustaining its validity. In the meanwhile, at
60 least for the immediate future and until further notice, the Commission does not intend to make any recommendations to

or requests upon the Department of Justice for the institution of proceedings to enforce criminal liabilities under the Act. The Commission understands that the Attorney General has sent a circular to District Attorneys setting forth the attitude of the Department of Justice.

(5) Counsel for the Commission is firmly of the opinion that registration does not constitute a waiver of any constitutional right which the registering company may have. And the Commission under its rule-making power expressly permits the registrant to reserve his constitutional rights. The Commission is prepared to go further and accept a notification that expressly stipulates that the notification of registration will, at the option of the registrant, be deemed void if registrant's reservation of its constitutional rights is adjudged void or ineffective. No possible ground in reason remains for any company to fail to file a simple notification and registration under these circumstances as a sheer precautionary matter for the protection of its investors.

Exhibit E to affidavit

To Postmasters

OFFICE OF THE POSTMASTER GENERAL.
Washington, December 4, 1935.

The Public Utility Holding Company Act of 1935 makes it unlawful for certain holding companies to use the mails for specified purposes after December 1, 1935, unless such companies are registered with the Securities and Exchange Commission. It is probable that a number of such holding companies will not register under the act.

The Attorney General in Department of Justice Circular No. 2780, sent to all United States attorneys on November 21, 1935, and the Securities and Exchange Commission in its Holding Company Act, Release No. 22 of November 22, 1935, have announced that it is not the intention of the Government to institute criminal proceedings under the act pending the authoritative adjudication of civil proceedings which will promptly be instituted by the Government under section 18 (f) of the act against one or more representative
61 companies to compel compliance with the act.

Whatever may be the authority, if any, of the Postmaster General to exclude from the mails matter sent in violation of the act, the Postmaster General does not intend to exclude any company from using the mails, at least not before the validity of the act is judicially determined by the Supreme Court. You will accordingly take no steps to exclude unregistered holding companies from the use of the mails.

JAMES A. FARLEY,
Postmaster General.

(The Postal Bulletin, Washington, December 5, 1935.)

Note

Exhibit F is same as Exhibit attached to Answer of Plaintiff to Defendants' Motion for a Stay, etc.

Exhibit G to affidavit

In the District Court of the United States for the Southern District of New York

In Equity. No. E 81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, UNITED GAS CORPORATION, DEFENDANTS: AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS

62 Amended and supplemental bill of complaint

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The Securities and Exchange Commission brings this civil suit in equity by its solicitors, John J. Burns, General Counsel, and Robert H. Jackson, Special Counsel, against Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation; Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, and respectfully represents to this Honorable Court as follows:

I

That on November 26th, 1935, the plaintiff filed its original bill of complaint herein. That on December 6th, 1935, an order was entered by this court in this cause granting leave to Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, the Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power and Light Company, and Easton Consolidated Electric Company to intervene herein as parties defendant and to file answers and cross-bills to plaintiff's bill of complaint. That plaintiff seeks no relief against intervenors, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, for reasons hereinafter appearing.

63

II

(1) That the following terms, wherever they appear herein, are used in the sense defined by Section 2 (a) of the Act: Public utility company; electric utility company; gas utility company; holding company; subsidiary company; holding company system; affiliate; registered holding company; security; voting security; utility assets; service contract; sales contract; construction contract.

(2) That the term "defendants" when used in this complaint, except when the context otherwise indicates, means:

Electric Bond and Share Company,
American Gas and Electric Company,
American Power & Light Company,
Electric Power & Light Corporation,
National Power & Light Company,
United Gas Corporation,
Power Securities Corporation,
Idaho Power Company,
Utah Power & Light Company,
United Gas Public Service Company,
Houston Gulf Gas Company,
The Montana Power Company,
Nebraska Power Company,
Pacific Power & Light Company, and
Lehigh Power Securities Corporation.

III

That it appears to the plaintiff Commission that the defendants and each of them since December 1, 1935, have engaged, are now engaged, and will continue to engage in acts and practices which constitute and will constitute a violation of the provisions of the Public Utility Act of 1935 and of the rules, regulations, and orders thereunder, and the plaintiff therefore brings this suit in its own right pursuant to section 18 (f) and section 18 (g) of Title I of the said Act, for the purpose of enjoining and restraining the defendants from violating the provisions of section 4 (a) (1), (2), (3), (4), (5), and (6) of the Act and for the purpose of requiring the defendants to register pursuant to the provisions of section 5 of the Act. That jurisdiction of this suit is conferred upon this Honorable Court by section 25 of the Act.

64 IV

That each of the defendants is a duly organized and existing corporation, their respective States of Incorporation being:

Defendant	State of Incorporation
Electric Bond and Share Company	New York
American Gas and Electric Company	New York
American Power & Light Company	Maine
Electric Power & Light Corporation	Maine
National Power & Light Company	New Jersey
United Gas Corporation	Delaware
Power Securities Corporation	New Hampshire
Idaho Power Company	Maine
Utah Power & Light Company	Maine
United Gas Public Service Company	Delaware
Houston Gulf Gas Company	Delaware
The Montana Power Company	New Jersey
Nebraska Power Company	Maine
Pacific Power & Light Company	Maine
Lehigh Power Securities Corporation	Delaware

That none of the defendants has made application to the Securities and Exchange Commission (a) under section 2 (a) (7) (b) of the Act for an order declaring that it is not a holding company within the meaning of said Act, or (b) under section 3 (a) or any other section of the Act, for an order exempting it from any provision of the Act, and that the Commission has made no such order. That none of said defendants has registered with the Securities and Exchange Commission pursuant to Section 5 of the Act; and that the defendants have advised and notified the Commission that they will not register pursuant to section 5 of the Act.

V

That each of the defendants, American Power & Light Company, American Gas and Electric Company, Electric Power & Light Cor-

poration, United Gas Corporation, National Power & Light Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company,
65 and Lehigh Power Securities Corporation is a holding company as defined by section 2 (a) (7) (A) of the Act, in that it owns, controls, or holds with power to vote ten percentum or more of the outstanding securities of one or more companies which are public utility companies within the meaning of section 2 (a) (3), (4), and (5) and that defendant, Electric Bond and Share Company is a holding company as defined by section 2 (a) (7) (A) of the Act in that it owns, controls, or holds with power to vote ten percentum or more of the outstanding voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company, each of which is a holding company within the meaning of the said Act.

VI

That Electric Bond and Share Company is the top holding company in a holding company system, commonly known and sometimes hereinafter referred to as the Electric Bond and Share System, and which system includes all of the other defendants, as well as many other corporations. That the defendants American Gas & Electric Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company are intermediate holding companies in the Electric Bond and Share System. Each such intermediate holding company, together with its subsidiary holding companies and public utility companies, is likewise a holding company system, commonly known and sometimes hereinafter referred to, respectively, as the American Gas & Electric System, the American Power & Light System, the Electric Power & Light System, and the National Power & Light System.

That the defendants The Montana Power Company, Nebraska Power Company, and Pacific Power & Light Company are subsidiaries of the defendant American Power & Light Company and are included within the American Power & Light System.

That the defendants, United Gas Corporation, United Gas Public Service Company, Houston Gulf Gas Company, Utah Power & Light
Company, Power Securities Corporation, and Idaho Power
66 Company are all subsidiaries of the Electric Power & Light Corporation and included within the Electric Power & Light System.

That the defendant Lehigh Power Securities Company is a subsidiary of National Power & Light Company and included within the National Power & Light System.

That defendant Electric Bond and Share Company, through its stockownership in and control of the defendants, American Power and Light Company, American Gas and Electric Company, Electric Power and Light Corporation and National Power and Light Company, owns and controls electric and gas utility companies which are subsidiaries, as defined by the Act, of the defendants American Gas and Electric Company, American Power and Light Company, Electric Power and Light Company, or National Power and Light Company, and which own and operate electric utility assets and gas utility assets.

That the operating revenues of the Electric Bond and Share system are primarily derived from the sale of natural and manufactured gas and electric energy.

That the electric customers of the Electric Bond and Share system number over 2,300,000 and its revenues are derived from properties located in 32 states of the United States.

That its electric properties are generally divided and grouped in seven large interconnected interstate groups which transmit annually a total of approximately 13,000,000,000 kilowatt hours of electric energy, about 3,000,000,000 of which are transmitted across state lines.

That its gas properties form interconnected interstate systems for the production and transmission of manufactured and natural gas. That the gas utilities of the system operate in fifteen states and one foreign country; that the producing properties of this system embrace approximately 1,428,000 acres of gas fields; that the system owns or controls more than nine thousand miles of pipe lines used in the transmission of gas; that the system serves in excess of 450,000 customers; and that the yearly production of the system amounts to more than two hundred billion cubic feet of natural and manufactured gas, in excess of sixty billion of which are transported across state lines.

That the outstanding stock of the Electric Bond and Share
67 Company is owned by more than 130,000 stockholders located in every state of the United States, in each of its possessions and in many foreign countries.

VII

That the defendants are now doing and will continue to do the following acts forbidden to unregistered holding companies by the provisions of section 4 (a) of the Act, as hereinafter more particularly set forth:

(1) That since December 1, 1935, directly or indirectly, each and all of the defendants have engaged and will continue to engage in selling, transporting, transmitting, or distributing natural or manufactured gas and electric energy and have owned or operated and will continue to own or operate utility assets for the transportation,

transmission, or distribution of, natural or manufactured gas or electric energy, in interstate commerce, as forbidden to unregistered holding companies by section 4 (a) (1) of the Act.

(2) That directly or indirectly defendants Electric Bond and Share Company and American Gas and Electric Company have negotiated and entered into by use of the mails or means or instrumentalities of interstate commerce service, sales, and construction contracts, within the meaning of section 2 (a) (18), (19), and (20), undertaking to perform service, sales, and construction work for, and to sell goods to, public utility companies or holding companies and in the normal course of business since December 1, 1935, have continuously engaged and will continue to engage, either in their own names or through wholly owned subsidiaries, by use of the mails or means or instrumentalities of interstate commerce, in taking steps in the performance of such contracts, or similar contracts, similarly entered into, as forbidden to unregistered holding companies by section 4 (a) (2) of the Act.

(3) That directly or indirectly each of the defendants has distributed or made public offerings for sale or exchange, and will continue as its business needs require to distribute or make public offerings for sale or exchange of its securities or the securities of its subsidiary companies or affiliates, by use of the mails or means or instrumentalities of interstate commerce; and have sold and will continue to sell as its business needs require such securities
68 having reason to believe that such securities, by use of the mails or means or instrumentalities of interstate commerce, will be distributed or made the subject of public offerings, as forbidden to unregistered holding companies by section 4 (a) (3) of the Act.

(4) That directly or indirectly each of the defendants, by use of the mails or means or instrumentalities of interstate commerce, has acquired or negotiated for, and will continue as its business needs require to acquire, or negotiate for the acquisition of securities of its subsidiary companies or affiliates, or of public utility or holding companies, as forbidden to unregistered holding companies by section 4 (a) (4) of the Act.

(5) That since December 1, 1935, the defendants Electric Bond & Share Company and American Gas & Electric Company, in doing the acts described in sub-paragraph (2) of this paragraph, and all of the defendants in doing the acts described in sub-paragraphs (1), (3), and (4) of this paragraph have engaged, and will continue to engage, in business in interstate commerce, as forbidden to unregistered holding companies by Section 4 (a) (5) of the Act.

(6) That directly or indirectly each and all of the defendants own, control, or hold with power to vote securities of subsidiary companies which sell, transport, transmit, or distribute natural or

manufactured gas or electric energy and which own and opefate utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy, in interstate commerce, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act.

(7) That directly or indirectly defendant Electric Bond and Share Company owns, controls, or holds with power to vote all of the outstanding securities of one or more subsidiary companies which, in the ordinary course of their business, by use of the mails or means or instrumentalities of interstate commerce, are engaged in taking steps in the performance of service, sales, or construction contracts, undertaking to perform services or construction work for or sell goods to public utility companies or holding companies, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act.

69 VIII

(1) That defendant Electric Bond and Share Company owns voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, United Gas Corporation and National Power & Light Company in the following amounts:

A. 846,985 shares of the common stock of defendant American Gas and Electric Company, constituting 17.51 per centum of the voting securities of said company.

B. 51,840 shares of the $5 Preferred Stock and 937,213 shares of the common stock of defendant American Power & Light Company, constituting 20.77 per centum of the voting securities of said company.

C. 485 shares of the $7 Preferred Stock and 1,976,638 shares of the common stock of defendant Electric Power & Light Corporation, constituting 47.20 per centum of the voting securities of said company.

D. 752,666 shares of common stock of defendant United Gas Corporation, constituting 7 per centum of the voting securities of said company. Defendant Electric Power & Light Corporation owns 884,610 shares of the $7 Second Preferred Stock and 3,795,086 shares of the common stock constituting 61.58 per centum of the voting securities of said company.

E. 2,540,438 shares of the common stock of defendant National Power & Light Company, constituting 46.56 per centum of the voting securities of said company.

(2) That defendant Electric Bond and Share Company owns all the capital stock of Ebasco Services Incorporated which, in turn, owns all the capital stock of Phoenix Engineering Corporation, and Two Rector Street Corporation.

IX

(1) That defendant American Gas and Electric Company owns all or substantially all the voting securities of the following public utility companies, which are also holding companies:

A. Atlantic City Electric Company, which in turn owns 50 per centum of the voting securities of Deepwater Operating Company, a public utility company.

70 B. The Ohio Power Company, which in turn owns 50 per centum of the voting securities of Beech Bottom Power Company, Inc., a public utility company.

C. The Scranton Electric Company, which in turn owns 50 per centum of the voting securities of Stanton Operating Company, a public utility company.

D. Appalachian Electric Power Company, which in turn owns all of the voting securities of Kentucky and West Virginia Power Company, Inc., and Kingsport Utilities, Inc., both public utility companies.

(2) That defendant American Gas and Electric Company owns all or substantially all of the voting securities of the following public utility operating companies:

A. Indiana General Service Company.

B. Indiana and Michigan Electric Company.

C. Wheeling Electric Company.

D. Southern Ohio Public Service Company.

X

(1) That defendant American Power & Light Company owns all or substantially all of the voting securities of the following public utility companies which are also holding companies:

A. Defendant Montana Power Company which in turn owns all or substantially all of the voting securities of Idaho Transmission Company, a public utility company.

B. Defendant Nebraska Power Company which in turn owns all or substantially all of the voting securities of Citizen's Power and Light Company, a public utility company.

C. Defendant Pacific Power and Light Company which in turn owns all or substantially all of the voting securities of Inland Power and Light Company, a public utility company.

D. The Washington Water Power Company, which in turn owns all or substantially all of the voting securities of Chelan Electric Company, a public utility company.

(2) That defendant American Power & Light Company owns all or substantially all of the voting securities of the folowing public utility companies:

71 A. Central Arizona Light & Power Co.
B. Florida Power and Light Company.
C. Kansas Gas and Electric Company.
D. Minnesota Power and Light Company.
E. Montana Power Gas Company.
F. New Mexico Electric Service Company.
G. Northern Power Company.
H. Texas Electric Service Company.
I. Texas Power and Light Company.
J. Texas Public Utilities Corporation.

(3) That defendant American Power & Light Company owns 84.03% of the voting securities of Portland Gas and Coke Company, 66.57% of the voting securities of Superior Water, Light and Power Company and 67.63% of the voting securities of Northwestern Electric Company, all public utility companies.

XI

(1) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Power Securities Corporation, a holding company. Defendant Power Securities Corporation owns all or substantially all of the voting securities of the defendant Idaho Power Company, a public utility company and holding company. Idaho Power Company owns all or substantially all of the voting securities of the Nevada Power Company and Salmon River Power & Light Company, both public utility companies.

(2) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Utah Power & Light Company, a holding company and public utility company. That Utah Power & Light Company owns all or substantially all of the voting securities of the Utah Light & Traction Company, Western Colorado Power Company, and Bountiful Light & Power Company, all public utility companies.

(3) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the following public utility operating companies:

A. Arkansas Power and Light Company.
B. Louisiana Power and Light Company.
C. Mississippi Power and Light Company.
D. New Orleans Public Service, Incorporated.

72 (4) That defendant Electric Power & Light Corporation owns 69.98% of the voting securities of Dallas Power and Light Company, a public utility company, and 61.58% of the voting securities of defendant United Gas Corporation, a public utility company and holding company, as hereinafter alleged.

XII

(1) That defendant United Gas Corporation owns all or substantially all of the voting securities of defendant United Gas Public Service Company, its principal subsidiary operating company, which in turn owns all or substantially all of the voting securities of United Production Company, Southern Gas and Fuel Company, Compania Mexicana de Gas, S. A., Southern Gas Utilities, Inc., Northern Texas Utilities Company, all public utility companies, and defendant Houston Gulf Gas Company, a public utility company and holding company.

(2) That defendant Houston Gulf Gas Company in turn owns all or substantially all of the voting securities of Houston Gas and Fuel Company, a public utility company.

(3) That defendant United Gas Corporation, in addition to the above named companies, owns substantial amounts of the voting securities of the following public utility companies in approximate percentages as follows:

A. Mississippi River Fuel Corporation—47%.
B. El Paso Natural Gas Company—27%.
C. Natural Gas Company, Inc.—50%.

XIII

(1) That defendant National Power & Light Company owns all or substantially all of the voting securities of defendant Lehigh Power Securities Corporation, a holding company, which in turn owns voting securities of the following public utility companies which are also holding companies:

A. All or substantially all of the voting securities of Lehigh Valley Transit Company, which owns all or substantially all of the voting securities of Easton Consolidated Electric Company. Easton Consolidated Electric Company in turn owns all or substantially all of the voting securities of Edison Illuminating Company of Easton, a public utility company.

73 B. 75.63% of the voting securities of Pennsylvania Power and Light Company, which owns all or substantially all of the outstanding voting securities of the following public utility companies:

1. The Carlisle Gas and Water Company.
2. Columbia Gas Company.
3. Lehighton Electric Light and Power Company.
4. Pine Grove Electric Light, Heat and Power Company.
5. Shenandoah Light, Heat and Power Company.
6. Susquehanna Gas Company.

(2) That defendant National Power and Light Company owns all or substantially all of the voting securities of the following public utility companies:

A. Birmingham Electric Light Company.
B. Carolina Power and Light Company.
C. Holston River Electric Company.
D. Houston Lighting and Power Company.
E. Memphis Power and Light Company.
F. Roanoke River Power Company.
G. Tennessee Public Service Company.
H. West Tennessee Power and Light Company.

(3) That defendant National Power and Light Company, in addition to the companies named above, also owns approximately 17 per cent of the outstanding voting securities of the Memphis Natural Gas Company, a pipeline company which transmits gas from Louisiana through Arkansas and Mississippi into Tennessee.

XIV

That the following holding companies, which are members of the Electric Bond and Share System and are more specifically described in paragraphs IX, X and XIII hereof, have not been included in paragraph two hereof as defendants:

American Gas and Electric System:

Appalachian Electric Power Company
The Ohio Power Company
The Scranton Electric Company
Atlantic City Electric Company

74 American Power and Light System:

Washington Water Power Company

National Power and Light System:

Pennsylvania Power and Light Company
Lehigh Valley Transit Company
Easton Consolidated Electric Company

That said companies have been omitted from the list of defendants in paragraph two hereof, by reason of the following: On November 29, 1935, the plaintiff, Securities and Exchange Commission, acting pursuant to the authority conferred upon it by Section 3 (a) of the Act, adopted a rule known as rule 3 A–2, a copy of which rule is attached hereto, marked "Exhibit A" and made a part hereof. Said rule, subject to the time limitations therein specified, exempts the holding companies of the classes therein described from any obligation, duty or liability imposed by the Act. From the information now available to the plaintiff it appears to said plaintiff that said Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Washington Water Power Company, Pennsylvania Power and Light Company, Lehigh Valley Transit Company *Company* and Easton Consolidated Electric Company are companies which are included within one or more of the classes of

companies specified in said rule and are, therefore, now exempt, under the terms of said rule, from any obligation, duty or liability imposed by the Act, and specifically are by said rule exempt from the requirement of registration under Section 5 of the Act.

XV.

(1) That each of the operating electric utility companies included within the Electric Bond & Share System is engaged in the business of generating or receiving electric energy and delivering and distributing such electric energy for sale. That a large amount of the electric energy generated and received by the electric utility companies in the system is transmitted in interstate commerce from the state in which it is generated to the states in which it is distributed and consumed. That many of the electric utility companies in the Electric Band & Share System own, or lease and operate, utility assets for the transmission of, or take part in the transmission of, large amounts of electric energy in interstate commerce. That many of the electric utility companies in the system own, or lease and operate, electric power lines which cross state lines, and that such companies transmit in interstate commerce energy generated in one state to other states in which such energy is delivered, distributed, and consumed. That many of the electric utility companies in the system own or lease and operate power lines over which such companies transmit electric energy generated in one state to the borders of such state, and that at such borders, these power lines are connected with the power lines of electric utility companies operating in contiguous states, where such electric energy is delivered, distributed, and consumed. That many of the electric utility companies in the Electric Bond & Share System receive electric energy in one state which has been generated in and transmitted from another state, and distribute and deliver such electric energy for consumption in the state in which it is received.

That electric energy which is transmitted in interstate commerce and across state lines is herein for convenience referred to as "interstate electric energy" and that the generation, receipt, transmission, delivery, or distribution of electric energy is herein for convenience referred to as "handling." That, during the year 1933, (a) the total quantity of all electric energy handled by each operating electric utility company in the Electric Bond & Share System, (b) the quantity of interstate electric energy handled by each such company, and (c) the ratio of the interstate electric energy handled by each such company to the aggregate amount of electric energy handled by such company was as follows:

Company	Total quantity of electric energy handled (1,000 kilowatt hours)	Interstate electric energy handled (1,000 kilowatt hours)	Ratio interstate handled to total handled
American Gas & Electric System:			
Atlantic City Electric Co.	193, 920		
(Includes energy supplied by Deep Water Operating Company)	1, 345, 491	962, 370	72. 8
Appalachian Electric Power Co.			
(Includes Kentucky-West Virginia Power Co. and Kingsport Utilities, Inc.)	130, 085		
Indiana General Service Co.	457, 209	304, 000	74. 7
76 Indiana & Michigan Electric Co.	1, 808, 945	808, 244	49. 2
Ohio Power Co.			
(Includes energy supplied by Beech Bottom Power Co., Southern Ohio Public Service Co., and Ohio State Power Co.).	240, 555		
Scranton Electric Co.			
(Includes energy supplied by Scranton Operating Company)	92, 040	9, 270	10. 1
Wheeling Electric Co.			
American Power & Light System:	76, 137		
Central Arizona Light & Power Co.	187, 484		
Florida Power & Light Co.	223, 142	7, 411	3. 3
Kansas Gas & Electric Co.	306, 679	30, 747	10. 0
Minnesota Power & Light Co.	808, 412	17, 886	2. 0
Montana Power Co.			
(Includes Idaho Transmission Co.)	314, 936	24, 456	7. 8
Nebraska Power Co.			
(Includes Citizens Power & Light Co.)	2, 130		
New Mexico Electric Service Co.	18, 396	18, 396	100. 0
Northern Power Co.	266, 944	123, 543	46. 3
Northwestern Electric Co.	327, 685	50, 725	15. 5
Pacific Power & Light Co.			
(Includes Inland Power & Light Co.)	12, 685	12, 351	97. 4
Superior Water, Light & Power Co.	306, 417		
Texas Electric Service Co.	493, 276		
Texas Power & Light Co.	1, 740		
Texas Public Utilities Corp.	652, 882	208, 993	9 32. 1
Washington Water Power Co.			
Electric Power & Light System:	295, 801	184, 497	62. 2
Arkansas Power & Light Co.	210, 136		
Dallas Power & Light Co.	533, 646	308, 822	58. 4
Louisiana Power & Light Co.	152, 668	126, 559	93. 4
Mississippi Power & Light Co.	296, 420		
New Orleans Public Service, Inc.	496, 101	242, 159	49. 8
Utah Power & Light Co.			
(Includes Utah Light & Traction Company)	20, 212		
Western Colorado Power Co.	402, 6-2	16, 390	4. 1
Idaho Power Co.	526		
Salmon River Power & Light Co.	441	441	100. 0
Nevada Power Co.	812		
Bountiful Light & Power Co.			
National Power & Light System:	196, 012		
Birmingham Electric Co.	909, 965	572, 770	59. 1
Carolina Power & Light Co.	1, 223		
Ifolston River Co.	442, 878		
Houston Lighting & Power Co.	1, 573, 890	45, 453	2. 8
Pennsylvania Power & Light Co.			
(Includes Lehighton Electric Light and Power Co., Carlisle Gas and Water Co., and Pinegrove Electric Light, Heat and Power Co., and energy supplied by Scranton Operating Co. and Canestoga Transmission Co.)	169, 511	782	.4
Memphis Power & Light Co.	90, 208	89, 821	99. 5
Tennessee Public Service Co.	16, 000		
West Tennessee Power & Light Co.			

77 That, at the present time, the ratio of the interstate electric energy handled by each of the foregoing electric utility companies to the aggregate amount of electric energy handled by it is substantially the same as, or in excess of, such ratio during the year 1933, as hereinabove alleged.

(2) That each of the gas utility companies included within the Electric Bond and Share System is engaged in the business of manufacturing or extracting gas and delivering and distributing such gas for sale. That a large amount of the natural and manufactured gas extracted or manufactured by the gas utility companies in the system is transmitted in interstate commerce from the State in which it is extracted or manufactured to the States in which it is distributed and consumed. That many of the gas utility companies in the system own or lease and operate utility assets for the transmission of, or take part in the transmission of large amounts of natural and manufactured gas in interstate commerce. That the following companies in the Electric Bond and Share System transmit or take part in the transmission of natural and manufactured gas in interstate commerce:

A. Electric Power & Light System.—That defendant United Gas Corporation, a member of the Electric Power & Light System, through its subsidiary, the defendant United Gas Public Service Company, more specifically described in paragraph XII hereof, owns and operates an interconnected interstate system of pipe-lines which are used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce through the States of Florida, Alabama, Mississippi, Louisiana, and Texas. That, in addition, the following subsidiaries of United Gas Corporation, more specifically described in paragraph XII hereof, own and operate utility assets for the transmission of and transmit or take part in the transmission of substantial amounts of manufactured or natural gas in interstate commerce:

(1) Mississippi River Fuel Corporation, which owns and operates an interstate pipe-line carrying large quantities of natural gas in interstate commerce from fields in Louisiana to Missouri.

(2) El Paso Natural Gas Company, which owns and operates an interstate interconnected system of pipe-lines used in the trans-
78 mission of a substantial amount of natural and manufactured gas in interstate commerce from New Mexico into Texas, Arizona, and the Republic of Mexico.

(3) Consolidated Gas Utilities Company, which owns and operates an interconnected system of pipe-lines used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce from Texas into Oklahoma and Kansas.

B. American Power & Light System.—That the following subsidiary gas utility companies of the American Power & Light Company, which are more specifically described in paragraph X hereof, own and operate utility assets for the transmission of natural or

manufactured gas in interstate commerce, and transmit or take part in the transmission of substantial amounts of natural or manufactured gas in interstate commerce:

(1) Portland Gas and Coke Company, which transmits substantial amounts of gas, natural or manufactured, in interstate commerce from Oregon to Washington.

(2) Superior Water, Light and Power Company, which transmits substantial amounts of gas, natural or manufactured, from Minnesota to Wisconsin.

(3) Central Arizona Light and Power Company, which receives and distributes in Arizona substantial amounts of natural gas produced in New Mexico.

XVI

(1) That defendant Electric Bond and Share Company organized the defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American Gas and Electric Company for the purpose and with the intention of employing said corporations as its corporate instrumentalities for the acquisition, financing, and control of public utility companies; that, at the time of the organization of the aforesaid defendant corporations, defendant Electric Bond and Share Company acquired by subscription and purchase or in exchange for property, voting securities of said corporations in an amount sufficient to enable it to dominate and control the affairs of said corporations, and has ever since retained voting securities in an amount sufficient to insure such domination and control. That de-

79 fendant Electric Bond and Share Company has in fact at all times completely dominated and controlled all the corporate activities of said defendants. That defendant Electric Bond and Share Company caused its own directors and executive officers to be elected directors and officers of each of said defendants, with the exception of American Gas and Electric Company, at the time of its organization, and that this substantial identity of directors and executive officers continued until after the passage of the Public Utility Holding Company Act of 1935; that, shortly after the passage of the Act, defendant Electric Bond and Share Company caused the then officers and directors of said defendants, with the exception of American Gas and Electric Company, to resign and elected other executive officers of the Electric Bond and Share Company System in their stead, so as to terminate the substantial identity of directors and executive officers previously existing, but so as to continue in control of said defendants a management completely subject to the domination and control of the defendant Electric Bond and Share Company. That the officers and directors of all of said defendant companies, including American Gas and Electric Company, have at all times been and now are persons designated by Electric Bond and Share Company, and who, by virtue of their relations with

Electric Bond and Share Company, are subject to its direction and control.

(2) That some time subsequent to the organization of the defendants American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, defendant Electric Bond and Share Company prepared and adopted a standard form of service contract, hereinafter more particularly described, and through the exercise of its control over said defendants, caused them to enter into such contracts with it. Pursuant to said contracts, defendant Electric Bond and Share Company undertook to perform and did perform for said defendants substantially all the activities necessary to the conduct of their corporate business and functions. That some time subsequent to the passage of the Act, defendant Electric Bond and Share Company caused to be organized Ebasco Services Incorporated, all of the outstanding capital stock of which is owned and held by Electric Bond and Share Company.

That Electric Bond and Share Company thereupon assigned
80 to Ebasco Services Incorporated all of its right, title and interest in the service contracts hereinabove referred to. That subsequent to the date of such assignments, Electric Bond and Share Company, acting through Ebasco Services Incorporated, has continued to perform all of the services which it undertook to perform in said service contracts.

(3) That the defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American Gas and Electric Company own all or substantially all of the voting securities of public utility operating companies and of holding companies which in turn own all or substantially all of the outstanding voting securities of public utility operating companies, all as more specifically alleged in paragraphs IX, X, XI, XII, and XIII hereof. That the securities so owned by said defendants were either transferred to them by Electric Bond and Share Company or were purchased by them at the instance of the Electric Bond and Share Company. That said defendants perform no functions with respect to the public utility and holding companies thus owned, except to serve as mediums through which defendant Electric Bond and Share Company may publicly finance the operations of the subsidiary public utility companies of the Electric Bond and Share System, and through which defendant Electric Bond and Share Company, with a comparatively small investment of its own, may dominate and control the operations of these subsidiary public utility companies. That since their organization by it, defendant Electric Bond and Share Company has effectively used said defendants as instrumentalities for completely dominating and controlling the operations of the public utility companies of the system. That as a consequence of this domination and control, all important questions of business policy and personnel arising in the operations of the public utility companies of the Electric Bond and Share System are determined by defendant Electric Bond and Share Company,

and all of these subsidiary public utility companies are controlled and operated as component members of a single system.

(4) That defendant Electric Bond and Share Company has also for many years controlled and directed, and now continues to
81 control and direct the operations of the subsidiary public utility companies of the system, other than subsidiaries of American Gas and Electric Company, by means of supervisory services rendered to these subsidiary public utility companies; that defendant Electric Bond and Share Company has adopted a standard form of service contract for public utility companies, hereinafter more particularly set forth, covering all important aspects of the operations of its subsidiary public utility companies; that it has caused all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, to negotiate and enter into such service contracts, in accordance with which defendant Electric Bond and Share Company has maintained an elaborate service organization through which it has in fact regularly and continuously performed all the services set forth in the standard service contract, and other services as well, for these public utility companies. That subsequent to the passage of the Public Utility Holding Company Act of 1935 and the organization of Ebasco Services Incorporated, as hereinabove alleged, Electric Bond and Share Company assigned to Ebasco Services Incorporated its service contracts with said subsidiary public utility companies. That either in its own name or through Ebasco Services, Incorporated, defendant Electric Bond and Share Company now continues and will continue, to perform all the services set forth in the standard form of service contract and many other services for all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, and continues and will continue thus to supervise, direct, and control in all important aspects, the operations of these subsidiary public utility companies.

(5) That defendant Electric Bond and Share Company, by means of its voting control, its supervisory services, and other means, as hereinabove set forth, has controlled, supervised, and directed the business and affairs of its subsidiary public utility companies which are engaged in the interstate transmission of electric energy, and natural and manufactured gas, as hereinabove alleged; that defendant Electric Bond and Share Company has caused its sub-
82 sidiary holding companies to purchase controlling interests in public utility companies in part for the purpose of facilitating and developing the interstate transmission of natural and manufactured gas and electric energy; that defendant Electric Bond and Share Company has constructed or caused its subsidiary utility companies to construct utility properties for the interstate transmission of gas and electric energy, has caused the purchase and construction of utility properties for the generation of electric energy

and the development of natural and manufactured gas to be transmitted in interstate commerce, and has caused and facilitated the development of interconnections between utility properties for the interstate transmission of gas and electric energy; and that by reason of these activities, defendant Electric Bond and Share Company, both in its own corporate capacity and through the corporate organizations of the other holding companies named defendants herein, is engaged and will continue to be engaged in the transmission in interstate commerce of electric energy and manufactured and natural gas.

(6) That defendant American Gas and Electric Company actively dominates and controls its subsidiary public utility companies through its ownership of substantially all of their voting securities and through other means hereinafter set forth; that defendant American Gas and Electric Company maintains a service organization through which it renders to all or substantially all of its subsidiary public utility companies, supervisory services covering all important aspects of their business operations; that defendant American Gas and Electric Company in rendering these services supervises, directs, and controls the business, affairs, and operations of its subsidiary public utility companies which are engaged in the transmission of electric energy in interstate commerce, as hereinabove alleged; that by virtue of these activities, defendant American Gas and Electric Company is itself actively engaged and will continue to be actively engaged in the interstate transmission of electric energy.

(7) That defendants, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, are engaged
83 in the interstate transmission of electric energy or natural or manufactured gas, either themselves or through the instrumentality of public utility companies, all or substantially all of whose voting securities are owned by said defendants.

XVII

That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstate commerce is or will be continuously engaged, either in its own name or through the instrumentality of Ebasco Services, Incorporated, in the performance of the existing service contracts with American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company. That in said contracts, defendant Electric Bond and Share Company, in its own name or through Ebasco Services, Incorporated, for an agreed rate of compensation, based on the gross earnings of the supervised holding company and its subsidiaries, undertakes to

furnish and the supervised holding company agrees to accept and pay for full and complete services of a management, financial, auditing, engineering, and secretarial nature. That more specifically such contracts provide:

(1) As to Executive Officers.—That the Electric Bond and Share Company will lend the assistance of its executive officers to aid in the development of general policies and the solution of major problems arising in connection with the affairs and management of the supervised holding company.

(2) As to Officers and Directors.—That the Electric Bond and Share Company will make available its executives and other members of its organization for service as directors and officers of the supervised holding company.

(3) As to Office Accommodation and Staff.—That the Electric Bond and Share Company will provide office accommodation and staff personnel in New York for the transaction of business for the supervised holding company.

(4) As to Sponsors.—That the members of the staff of Electric Bond and Share Company will serve as sponsors, sponsor engineers, and sponsor accountants for the operating subsidiaries of the supervised holding company, and will be available for consultation,
84 advice and assistance in the interest of the systematic development and operation of the supervised holding company's system as a whole.

(5) As to Capital and Corporate Matters.—That the Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring, and retirement of the securities of the supervised holding company, and assist in other important corporate actions.

(6) As to Secretarial Service.—That the Electric Bond and Share Company will direct, to the extent desired or required, the calling of stockholders, directors, and committee meetings of the supervised holding company, will compile information and programs of action for such meetings, cooperate in the drafting of resolutions, and that the members of the Electric Bond and Share Company who are officers of the supervised holding company will maintain records of and make notifications of actions taken at such meetings.

(7) As to Tax Services.—That the Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules, will assist in presenting claims for refunds, abatements, and adjustments of taxes, will assist in cooperation with paying agents in accounting and reporting interest payments; will keep informed as to tax law, and will assist in the preparation and filing of state and local tax returns.

(8) As to Financial Service.—That the Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing, and will arrange for the employment of temporary surplus cash.

(9) As to Funds and Securities.—That the officers of Electric Bond and Share Company who are also officers of the supervised holding company will attend to the receipt and disbursement of funds, in connection with which Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports. and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed.

85 (10) As to Accounting and Analysis.—That the Electric Bond and Share Company will do all bookkeeping, accounting, and auditing work for the supervised holding company, except annual or special audits which are made by outside auditors; and that Electric Bond and Share Company will do all work incident to vouchering for payment of and pay invoices, reconcile bank accounts, furnish the supervised holding company with monthly statements thereof, and prepare analyses of accounts for the officers of the supervised holding company.

(11) As to Statistics and Reports.—That Electric Bond and Share Company will draft and submit to the supervised holding company reports to be sent to stockholders, interested bankers, and financial publications; and will submit to the supervised holding company reports of interest concerning other public utility companies.

(12) As to Security Listings.—That Electric Bond and Share Company will prepare appropriate applications for the listing of securities on stock exchanges and will prepare periodical financial statements in connection therewith, and will assist in any hearings required by stock exchange officers.

(13) As to Subsidiary Holding Companies.—That Electric Bond and Share Company when requested by the supervised holding company will perform the same supervision and general services as hereinabove set forth for any of the subsidiary holding companies of the supervised holding company.

(14) As to Security Sales.—That Electric Bond and Share Company, for an additional compensation based upon the amount of securities sold, will, except when otherwise directed, take charge of the sale at wholesale of securities for the supervised holding company and its holding company subsidiaries; supervise the preparation of mortgages, indentures, and trust agreements; prepare and distribute statements for the information of interested public authorities, bankers, and investors; be prepared to answer legitimate questions from investing interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised holding company and its subsidiary holding companies.

(15) That Electric Bond and Share for an additional com-
86 pensation based upon the amount of securities sold will direct sales of such stock of the supervised holding companies and of its subsidiary holding companies as they wish to sell to the consumers in the territory served by operating subsidiaries.

(16) That Electric Bond and Share Company will aid in the preparation of special reports required by state public utilities commissions and "blue sky" laws and for the qualification of securities as legal investments for savings banks, trustees, and other regulated financial institutions.

(17) As to Acquisition and Exchange of Properties.—That Electric Bond and Share Company for an additional compensation will provide expert engineers, statisticians, auditors, accountants, and rate and corporate specialists to aid in the acquisition of new properties and companies, and aid in the sale or exchange of properties.

(18) That for a compensation to be agreed upon, Electric Bond and Share Company to the best of its ability will carry out any request for services not contemplated by the contract.

XVIII

That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstated commerce, in its own name or through Ebasco Services, Incorporated, is and will be continuously engaged in taking steps in the performance of its existing service contracts with the utility companies in the Electric Bond and Share System. That in such contracts, defendant Electric Bond and Share Company, in its own name or through Ebasco Services, Incorporated, for an agreed rate of compensation based upon total monthly operating revenues, undertakes to render extensive services, and the operating public utility agrees to accept such services and to pay for the same. That more specifically such contracts provide:

1. As to Executive Officers.—That Electric Bond and Share Company will lend the assistance of its executive officers to aid in the development of general policies and the solution of major problems arising in connection with the operation and management of the supervised operating company.

87 2. As to Supplying of Officers and Directors.—That Electric Bond and Share Company will make available its executives and other members of its organization for service as directors and officers of the supervised operating company.

3. As to Sponsors.—That Electric Bond and Share Company will provide one or more of its operating specialists to serve as sponsor for the supervised operating company, which sponsor will visit the properties as frequently as may be necessary for a comprehensive knowledge of the situation and local problems of the operating

company; that one of the senior engineers of Electric Bond and Share Company will serve as sponsor engineer for the supervised operating company in which capacity he will visit its properties from time to time; that one of the senior accountants of Electric Bond and Share Company will serve as sponsor accountant for the operating company in which capacity he will maintain contact therewith through correspondence or by visits.

4. As to Capitol and Corporate Matters.—That Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring, and retirement of the securities of the supervised operating company; that Electric Bond and Share Company will advise with the officers and counsel of the supervised operating company in administration of legal work.

5. As to Secretarial Service—Corporate Meetings.—That Electric Bond and Share Company will direct, to the extent desired, the calling, notification and recording of stockholders, directors and committee meetings of the supervised operating company; that the Electric Bond and Share Company will assist in the compilation of information, preparation of programs of action, and drafting of appropriate resolutions for such meetings; that upon request, a sponsor or other representative of Electric Bond and Share Company will attend such meetings to give information and advice on the business and affairs of the supervised operating company.

6. As to Tax Services.—That the defendant Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules; will assist in presenting claims for refunds, abatements and adjustments of taxes, will assist in cooperation with
88 paying agents of the supervised company in accounting and reporting interest payments; will keep informed as to tax law, and will assist in the preparation and filing of state and local tax returns.

7. As to Construction Programs, Budgets, Forecasts.—That the Electric Bond and Share Company will advise and assist in formulating a development, construction program, coordinating of current extensions with such program, and preparing annual construction budgets; that in connection with such budgets the Electric Bond and Share Company will estimate costs, and make recommendations as to necessity and time for contemplated construction; that Electric Bond and Share Company will assist and advise in the preparation of operating budgets and forecasts, covering revenues and expenditures.

8. As to Financial Services.—That Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing, and will arrange for the employment of temporary surplus cash.

9. As to Receipt, Disbursement, and Care of Funds.—That the officers of Electric Bond and Share Company who are also officers

of the supervised operating company will attend to the receipt and disbursement of such funds of the supervised operating company as are receivable at or disbursed from New York, and in connection therewith Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports; and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed.

10. As to Accounting and Analyses.—That Electric Bond and Share Company will do all work incident to vouchering for payment, and will pay such invoices as the supervised operating company desires paid from New York, reconcile New York bank accounts, furnish monthly statements thereof, and prepare analyses of accounts for the officers of the supervised operating company; that the accounting specialists of Electric Bond and Share Company will be available in New York for consultation on all accounting matters,
including merchandising and jobbing accounting, utilization of
89 mechanical accounting, office devices, and uniform classification of materials and supplies and control thereof.

11. As to Statistics and Reports.—That Electric Bond and Share Company will advise and assist in the preparation of reports to be sent to stockholders, interested bankers, and financial publications, and will furnish upon request reports of interest concerning other public utility companies.

12. As to Stock Exchange Listings.—That Electric Bond and Share Company will assist in the preparation of and arrange for the presentation of applications for the listing of securities, will assist in the preparation of periodical financial statements in connection therewith, and will, when requested, attend and assist in any hearings required by stock exchange officers.

13. As to Public Relations.—That Electric Bond and Share Company will advise and collaborate with the officers of the supervised operating company on questions of business policy, and customer, employee, and public relations; that Electric Bond and Share Company will furnish digests of state and federal regulations and laws, and economic trade, and technical literature, pertaining to the the problems of the supervised operating company.

14. As to Personnel.—That, when agreeable to all parties interested, Electric Bond and Share Company will make recommendations for the transfer of personally observed, qualified men, from one operating company to another, and that Electric Bond and Share Company will assist in obtaining needed personnel.

15. As to Territorial Development.—That Electric Bond and Share Company will advise and assist in the industrial development of the territory served by the supervised operating company, the extension of services into new territory, and acquisitions of new properties.

16. As to New Business, Merchandising, and Jobbing.—That Electric Bond and Share Company will assist in the development of new business, merchandising, and jobbing departments, will plan and assist in installing of modern equipment and system of report forms for solicitation of new business, will supply data on the requirements of any class of business and on the cost of competitive services, will keep in touch with, and inform the supervised company of manufacturing developments in appliances, and will
90 assist in campaigns for special merchandising activities on particular classes of appliances.

17. As to Rates.—That rate specialists of Electric Bond and Share Company will be available in New York and will visit the property of the supervised operating company from time to time for consultation on rate problems, that Electric Bond and Share Company will inform the supervised operating company of public utility rates in force throughout the country, of developments in the theory and practice of rate-making, and of rate rulings and decisions, and that Electric Bond and Share Company will counsel and advise in the preparation and presentation of information, studies, and exhibits required for regulating authorities.

18. As to Consulting Engineering.—That the engineering staff of Electric Bond and Share Company comprises engineering specialists of diversified and extensive experience in technical public utility problems, together with a comprehensive auxiliary organization; that Electric Bond and Share Company keeps informed of public utility engineering developments, making investigations, and conducting research in connection therewith; that Electric Bond and Share Company maintains contact with United States and foreign public utility operations, the activities of technical societies, and with manufacturers of apparatus and equipment; that this organization will be available in New York for consultation on operation, extensions, and development plans; that Electric Bond and Share Company will advise on the cost estimates, designs, and plans of the supervised operating company, will assist in the application to the properties of the holding company of standard designs, types of construction, and methods of operation developed by Electric Bond and Share Company, and will supervise the installation and maintenance of technical and cost records pertaining to properties and operation.

19. As to Purchasing.—That Electric Bond and Share Company will negotiate volume contracts with manufacturers providing for quantity discounts on purchases of public utility supplies, and equipment, including lamps, motors, transformers, meters, electric and gas appliances, lubricating and insulating oils, electric railway supplies, automobiles, trucks, and office equipment; that Electric
91 Bond and Share Company, upon request, will so far as possible, include the supply requirements of the operating company in orders under those volume contracts; that Electric Bond and Share

Company will assist in arranging specific purchases, and in general serve as New York purchasing agent; that Electric Bond and Share Company maintains an information service, and will make available information on current market data, and other information and data likely to be of assistance.

20. As to Apparatus Exchange.—That for the benefit of all companies similarly served, the Electric Bond and Share Company conducts an apparatus exchange.

21. As to Traffic.—That Electric Bond and Share Company, when requested, will route and classify shipments, furnish information on routing, classification, insurance in transit, and procedure in filing claims and checking and auditing of transportation invoices, and will assist in locating and expediting strayed and delayed shipments insofar as this can be done in New York.

22. As to Factory Information.—That Electric Bond and Share Company, when requested, will advise on the status of factory production, and when necessary, on changes in orders for the improvement of deliveries or other advantages.

23. As to Insurance.—That Electric Bond and Share Company will assist in making investigations, reports, and proper classifications and reclassifications of insurable property and in preparation of policy forms; that, when requested, Electric Bond and Share Company will negotiate or assist in negotiating insurance for all risks so as to give the supervised operating company the benefit of advantageous terms obtainable because of the aggregate volume of insurance handled by Electric Bond and Share Company.

24. As to Sale and Marketing of Securities.—That Electric Bond and Share Company, for an additional compensation based upon the amount of securities sold, will, except when otherwise directed, take charge of the sale at wholesale of the securities of the supervised operating company and its controlled companies; will supervise the preparation of mortgages indentures, and trust agreements and prepare and distribute statements for the information of interested public authorities, bankers and investors; will be prepared to answer legitimate questions from investment interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised operating company and its controlled companies.

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25. That Electric Bond and Share Company for an additional compensation, will direct sales of such stock of the supervised operating company and its controlled companies as they wish to sell to the consumers in the territory served by the companies.

26. That Electric Bond and Share Company will aid in the preparation of special reports required by state public utility commissions and "blue sky" laws and for the qualification of securities as legal investments for saving banks, trustees, and other regulated financial institutions.

27. As to Engineering Services.—That Electric Bond and Share Company for an additional agreed rate of compensation will, when requested, render special engineering services such as the following: investigations and studies for plans of development; efficiency studies; detailed engineering assistance in interconnecting properties of the supervised company with properties of other companies, purchasing power and gas, and in selling services to other public utility companies and large consumers; appraisals of property; and inspection and tests of purchases.

28. As to Engineering for Construction.—That Electric Bond and Share Company for an additional agreed rate of compensation will upon request do all engineering required in connection with construction or reconstruction work done by one of the associated construction companies of Electric Bond and Share Company or by a general contractor under the supervision of such associated construction company.

29. As to Construction.—That Electric Bond and Share Company, when requested, will arrange for a construction contract between the supervised operating company and one of the associated construction companies of Electric Bond and Share Company under which the construction company for an agreed rate of compensation based on percentages of cost will take charge of construction or reconstruction work.

30. As to Construction Supervision.—That Electric Bond and Share Company when requested will arrange for a construction supervision contract between the supervised operating company and one of the associated construction companies of Electric Bond
93 and Share Company under which the construction company for an agreed rate of compensation based on percentages of construction cost will supervise construction work to be done by a general contractor.

31. As to Special Investigations and Reports.—That Electric Bond and Share Company for an additional, agreed rate of compensation will upon request provide the services of various experts for reports upon new properties, investigations for the industrial development of the territory served, detailed rate studies, detailed new business investigations, and special investigations of important projects and unusual problems, and that Electric Bond and Share Company will supplement such reports with analyses, comments and recommendations.

XIX

That Electric Bond and Share Company by virtue of its domination and control over the subsidiary operating companies in the Electric Bond and Share System, and pursuant to the service contracts described in paragraph XVIII hereof, in fact controls and directs the purchasing of, and through the instrumentality of Ebasco Services, Incorporated, purchases, all or substantially all of the

materials, supplies, and equipment required by said subsidiary operating companies with the exception of the subsidiary operating companies of the American Gas and Electric Company; that defendant Electric Bond and Share Company, or Ebasco Services, Incorporated, is a party to written or oral contracts, agreements or understandings with one or more independent manufacturing companies under which Electric Bond and Share Company or Ebasco Services, Incorporated, undertakes to place with such companies orders for all or substantially all of the materials, supplies, and equipment that may be required by the subsidiary operating companies which are parties to the service contract described in paragraph XVIII hereof; that in the continual performance of such agreements or understandings, Electric Bond and Share Company, in its own name or through the instrumentality of Ebasco Services, Incorporated, purchases annually for the account of such subsidiary operating companies materials, supplies, and equipment valued
94 at more than $50,000,000.00 and causes and will cause substantially all of such materials, supplies, and equipment to be shipped in interstate commerce from the factory or warehouse of the seller to the purchasing subsidiary operating company:

XX

That Electric Bond and Share Company; since the passage of the Holding Company Act, caused to be transferred all or substantially all the capital stock of its wholly owned subsidiary, Phoenix Engineering Corporation, to Ebasco Services, Incorporated; that defendant Electric Bond and Share Company, through the Phoenix Engineering Corporation, in accord with the arrangement contemplated by the standard form contract for operating public utility companies as hereinabove set forth, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce, regularly negotiates and enters into construction contracts with operating public utility companies of the Electric Bond and Share Group; and that in such construction contracts, Phoenix Engineering Corporation, for an agreed rate of compensation based upon percentages of cost, undertakes to complete specified construction and reconstruction work, and in connection therewith undertakes to purchase, for the account of the operating company, all necessary materials and equipment, to procure necessary insurance, to keep account of costs and render monthly statements thereof, and upon request to make tests of completed work, and for a trial period conduct operation thereof; that in the performance of these contracts Phoenix Engineering Corporation purchases large quantities of materials and equipment for the account of the operating company, and causes the shipment of said large quantities of materials and equipment across state lines from the place of business of seller to that of the operating company; that the defendant

Electric Bond and Share Company, through the Phoenix Engineering Corporation, in the ordinary course of its business, by constant use of the mails and the means and instrumentalities of interstate commerce, is continually engaged and will be continuously engaged in taking steps in the performance of such construction contracts.

95

XXI

1. That defendant Electric Bond and Share Company, in the ordinary course of its business by frequent use of the mails and the means and instrumentalities of interstate commerce, has engaged in the performance of financial services for defendant American Gas and Electric Company, and for the holding companies and utility companies in the American Gas and Electric System, including the sale at wholesale and retail of securities of such companies, which securities were caused by Electric Bond and Share Company to be offered for sale and widely distributed and sold in interstate commerce; that defendant Electric Bond and Share Company, or its wholly owned subsidiary, Ebasco Services, Incorporated, or both, in the normal course of business, and by use of the mails and the means and instrumentalities of interstate commerce, are taking and will continue to take steps in the performance of such financial services.

XXII

That defendant American Gas and Electric Company, in the ordinary course of its business by constant use of the mails and the means and instrumentalities of interstate commerce, is continuously engaged and will continue to engage in taking steps in the performance of a complete range of supervision and management services for its subsidiary holding companies and operating public utility companies, including financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical, and other services.

That the defendant American Gas & Electric Company has established and maintains at its offices in New York City nine or more service departments, employing approximately 300 persons, who are engaged in the performance of supervisory and management services for the holding companies and public utility companies in the American Gas & Electric System. That a substantial portion of the corporate expense of the defendant American Gas & Electric Company is incurred in the maintenance and operation of its servicing departments. That in consideration of an agreed rate of compensation paid to it, the American Gas & Electric Company,

96 through its servicing departments, performs the following services for the holding companies and public utility companies in the American Gas and Electric System:

1. EXECUTIVE OFFICES.—Supplies a complete staff of corporate officers to each of the subsidiary companies. Such corporate officers are chosen from among the officers and directors of the defendant American Gas & Electric Company.

2. LEGAL STAFF.—Cooperates with the officers and attorneys of the subsidiary companies in examining all laws relating to the business of such companies; prepares and records mortgages, negotiates and prepares contracts, examines and prepares deeds, prepares applications for the qualification of securities and applications to and protests before regulatory bodies and tax commissions, and furnishes legal representation upon other legal problems of the subsidiary companies.

3. PURCHASING STAFF.—Purchases substantially all materials, supplies and equipment for the subsidiary companies, relieving these companies of all details after they have requisitioned their needs to this department.

4. AUDITING AND ACCOUNTING DEPARTMENT.—Checks and audits the journal entries, general accounts, consumers' accounts receivable, inventory, freight bills and classifications of the subsidiary companies.

5. SECURITY DEPARTMENT.—Prepares and mails all dividend checks of the subsidiary companies, keeps the records of the stockholders of these companies by daily posting stock transfers, prepares new issues of bonds for execution and delivery, and arranges for the payment and cremation of coupons.

6. TAX DEPARTMENT.—Prepares for the subsidiary companies all reports for tax and regulatory commissions, including Federal income tax reports, and represents the subsidiary companies on all contested tax matters.

7. INSURANCE DEPARTMENT.—Inspects the property of the subsidiary companies to determine its valuation, negotiates for and places insurance coverage on this property and handles the preparation and presentation of all claims. Also coordinates plans for accident prevention among the subsidiary companies.

8. COMMERCIAL DEPARTMENT.—Prepares for the subsidiary
97 companies' rate structure, organizes and directs the solicitation of all new business, advertising, demonstrations, and the conduct of sales schools for the employees of the subsidiary companies.

9. ENGINEERING DEPARTMENT.—Makes surveys of the operating conditions of the subsidiary companies, including efficiency of combustion, cost of labor and transmission, interconnections and relay systems, and serves as instructors of the operating personnel of the subsidiary companies.

10. Other departments whose duty it is to keep statistical and other records for the common use of the subsidiary companies in order to facilitate an interchange of equipment and of experience in methods of operation.

XXIII

That defendant Electric Bond and Share Company, in performing its obligations under the service, sales, and construction contracts described in paragraphs XVII and XVIII hereof, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, since December 1, 1935, has engaged and will continue to engage in a business in interstate commerce within the meaning of Section 4 (a) (5) of the Act. That these contracts contemplate and their performance requires and depends upon, continuous and regular intercourse in interstate commerce and frequent transportation in interstate commerce of information in the form of books, periodicals, apparatus, papers, pamphlets, reports, and forms between offices of the Electric Bond and Share Company in New York City and the client subsidiary companies in 32 states other than the State of New York. That in these contracts, defendant Electric Bond and Share Company undertakes to and does send, as frequently as may be necessary, from its principal offices in New York to the companies served, sponsors, operating specialists, and engineers to confer, advise, and assist with respect to the problems of the operating companies, and that this obligation contemplates and its performance necessitates transportation in interstate commerce. That the accounting, financial, legal, and other services performed pursuant to said contracts from the offices of Electric Bond and Share Company in New York City by its officers and employees in said city to the client
98 companies in other states, contemplate and depend for their accomplishment, upon, and are performed by means of, interstate communication and interstate commerce. That in accordance with the provisions of the contracts with its client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, negotiates contracts and itself enters into contracts for the sale of equipment and supplies to the client companies, which contracts contemplate, and the performance of which requires and depends upon, and which are performed by means of, transportation in interstate commerce. That in accordance with the provisions of its contracts with client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, supervises the transportation in interstate commerce of equipment and supplies to client companies. That in accordance with the terms of contracts between itself and client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, conducts an apparatus exchange for the purchase, sale, and exchange of second-hand apparatus and materials among client companies and between client companies and other companies, and that the conduct of such apparatus exchange contemplates and requires shipments

of apparatus and materials in interstate commerce. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, in accordance with the terms of its contracts with client subsidiary companies, as their business needs require, negotiates and takes charge of the sale and distribution in interstate commerce of the securities of client companies and directs from its New York offices, through the channels of interstate commerce, the sale of the securities of client companies to their customers in the territories which they serve. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, or Phoenix Engineering Corporation, regularly purchases and ships materials, supplies, and equipment in interstate commerce as contemplated in, and required by, the construction contracts negotiated and entered into as here-
99 inabove set forth. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, receives compensation from its client subsidiary companies for the performance of the services described in this paragraph, in accordance with the terms of the standard contract as hereinabove set forth. That the compensation so received constitutes a substantial part of the earnings of defendant Electric Bond and Share Company. That the performance for compensation of the services described in this paragraph constitutes a business in interstate commerce, and that defendant Electric Bond and Share Company, both in its own name and through its wholly owned subsidiaries Ebasco Services, Incorporated, and Phoenix Engineering Corporation, although not registered under the Act, will continue to engage in such business in interstate commerce in violation of Section 4 (a) (5) of the Act.

XXIV

That defendant American Gas and Electric Company, in the ordinary course of its business, is regularly engaged in rendering supervision, management, and construction services for its subsidiaries, as hereinabove alleged, and that the performance of such services requires and causes regular and continuous intercourse in interstate commerce and transportation in interstate commerce of apparatus, materials, supplies, securities, books, pamphlets, periodicals, reports, papers, and forms. That the performance of these services by defendant American Gas and Electric Company constitutes engaging in business in interstate commerce, and that the defendant American Gas and Electric Company, although not registered under the Act, is engaging and will continue to engage in such business in interstate commerce in violation of section 4 (a) (5) of the Act.

XXV

Wherefore, pursuant to the provisions of section 18 (f) and (of Title I of the Public Utility Holding Company Act of 1935, the plaintiff respectfully prays:

(1) That each of the defendants be required to answer this amended and supplemental bill of complaint.

100 (2) That each and all of the defendants, by appropriate order of this court, be enjoined from violating any of the provisions of Section 4 (a) of the act, and be required to register pursuant to the provisions of Section 5 of said Act.

(3) For such other and further relief as the court may deem appropriate in the premises.

_____ _____,
General Counsel, Securities and Exchange Commission;

_____ _____,
Special Counsel,
Solicitors for the Plaintiff.

Office and Post Office Address, Room 1024, Securities and Exchange Commission, Washington, D. C., or 120 Broadway, New York City.

Exhibit A

Rule 3 A–2

Acting pursuant to authority conferred upon it by the Public Utility Holding Company Act of 1935, particularly section 3 (a) thereof, and finding that the exemption provided by the following Rule is not detrimental to the public interest or the interest of investors or consumers, the Securities and Exchange Commission hereby adopts the following Rule:

Rule 3 A–2. TEMPORARY EXEMPTION OF HOLDING COMPANIES.—(a) Subject to the time limitations specified in paragraph (b) of this Rule, any holding company shall be exempt from any obligation, duty, or liability imposed by the Act upon such company as a holding company, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominately intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominately a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or

more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) The exemptions provided by this rule shall continue until and including February 2, 1936, except that the exemption provided by sub-paragraph (a) (1) hereof shall continue until termination thereof by the Commission, either by amendment or repeal of this Rule.

Exhibit H to affidavit

Cases Filed Against Members of the Securities and Exchange Commission and Other Officers of the United States

Name of plaintiff	Court in which filed	Date of filing bill of complaint
The United Gas Improvement Company	U. S. District Court for the Eastern District of Pennsylvania.	Nov. 20, 1935.
Philadelphia Electric Company	U. S. District Court for the Eastern District of Pennsylvania.	Nov. 21, 1935.
The North American Company	Supreme Court of the District of Columbia.	Nov. 26, 1935.
Consolidated Gas Company of New York Central Union Gas Company New Amsterdam Gas Company The New York Edison Company, Inc Brooklyn Edison Company, Inc	U. S. District Court for the Southern District of New York.	Nov. 25, 1935.
Delaware Electric Power Company	U. S. District Court for the District of Delaware.	Nov. 21, 1935.
Susquehanna Utilities Company	U. S. District Court for the District of Delaware.	Nov. 21, 1935.
102 The Commonwealth & Southern Corporation	U. S. District Court for the District of Delaware.	Nov. 23, 1935.
American Water Works and Electric Company, Incorporated	Supreme Court of the District of Columbia.	Nov. 27, 1935.
Sierra Pacific Electric Company	U. S. District Court for the District of Maine-Southern Division.	Nov. 27, 1935.
The United Corporation New York United Corporation	U. S. District Court for the Southern District of New York.	Nov. 27, 1935.
Standard Gas and Electric Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
The Western Public Service Company	U. S. District Court for the District of Maryland.	Nov. 27, 1935.
Stone & Webster, Incorporated	U. S. District Court for the District of Delaware.	Nov. 26, 1935.

Cases Filed Against Members of the Securities and Exchange Commission and Other Officers of the United States—Continued

Name of plaintiff	Court in which filed	Date of filing bill of complaint
Engineers Public Service Company	U. S. District Court for the District of Delaware.	Nov. 26, 1935.
Stone & Webster Utilities Corporation	U. S. District Court for the District of Delaware.	Nov. 26, 1935.
Eastern Texas Electric Company	U. S. District Court for the District of Delaware.	Nov. 25, 1935.
El Paso Electric Company	U. S District Court for the District of Delaware.	Nov. 28, 1935.
The United Light and Power Company	Supreme Court of the District of Columbia.	Nov. 29, 1935.
Continental Gas & Electric Corporation Iowa-Nebraska Light and Power Company American Light & Traction Company	Supreme Court of the District of Columbia. Supreme Court of the District of Columbia.	Nov. 29, 1935. Nov. 29, 1935.
The United Light and Railways Company United American Company United States Electric Power Corporation	Supreme Court of the District of Columbia. U.S. District Court for the District of Maryland.	Nov. 29, 1935. Nov. 29, 1935.
The West Penn Electric Company	U. S. District Court for the District of Maryland.	Nov. 29, 1935.
103 Associated Gas and Electric Company Associated Gas and Electric Corporation Associated Electric Company Pennsylvania Electric Corporation NY PA NJ Utilities Company General Gas & Electric Corporation Southeastern Electric & Gas Company Eastern Power Corporation Associated Utilities Corporation American Utilities Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
North American Light & Power Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
North American Edison Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
American Utilities Service Corporation	U. S. District Court for the Northern District of Illinois.	Nov. 30, 1935.
The Tennessee Electric Power Company	Supreme Court of the District of Columbia.	Dec. 3, 1935.
The United Corporation New York United Corporation	U. S. District Court for the District of Delaware.	Nov. 29, 1935.
Cities Service Company et al Cities Service Power & Light Co. Arkansas Natural Gas Corporation Ohio Utilities Finance Company The Lake Shore Power Company The Ohio Public Service Company The Toledo Edison Company Toledo Light & Power Company Public Service Company of Colorado	U. S. District Court for the District of Delaware.	Nov. 29, 1935.
Cities Service Company Cities Service Power & Light Company Arkansas Natural Gas Company Ohio Utilities Finance Company Lakeshore Power Company Ohio Public Service Company Toledo Edison Company Toledo Light & Power Company Public Service Company of Colorado	U. S. District Court for the Southern District of New York.	Nov. 29, 1935.
Toledo Edison Company Ohio Public Service Company Lake Shore Power Company Ohio Utilities Finance Company Cities Service Company Service Power & Light Company Toledo Light and Power Company Public Service Company of Colorado	U. S. District Court for the Northern District of Ohio—Western Division.	Nov. 29, 1935.
Cities Service Company Cities Service Power & Light Company	U. S. District Court for the District of Colorado.	Nov. 29, 1935.
104 Standard Power & Light Corporation	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
Charles B. Barnes et al. (Eastern Utilities Association). Federal Light & Traction Co. and Central Arkansas Public Service Corporation.	U. S. District Court for the District of Massachusetts. U. S. District Court for the Southern District of New York.	Nov. 30, 1935.
East Tennessee Light & Power Cities Service Company Cities Service Power & Light Company	U. S. District Court for the Western District of Virginia.	Nov. 29, 1935.

Cases Filed Against Members of the Securities and Exchange Commission and Other Officers of the United States—Continued

Name of plaintiff	Court in which filed	Date of filing bill of complaint
Northern States Power Co. et al. (22 plaintiffs in all).	U. S. District Court for the District of Minnesota.	
North Continent Utilities Corporation	U. S. District Court for the District of Delaware.	Nov. 29, 1935.
American Gas & Power Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
Louisville Gas & Electric Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
Northeastern Water & Electric Corporation	U. S. District Court for the District of Delaware.	Dec. 4, 1935.
H. M. Byllesby & Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
The Byllesby Corporation	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
The Columbus Railway, Power & Light Company.	U. S. District Court for the Southern District of Ohio—Eastern Division.	Nov. 30, 1935.

Cases between private litigants

Title of Case	Court in Which Filed	Date of Filing Bill of Complaint
Albert E. Peirce and Central Public Service Company, etc., v. Central Public Utility Corporation and Consolidated Gas Company.	U. S. District Court for the District of Delaware.	Dec. 4, 1935.
National Public Utilities Corporation (Stockholders' Suit).	U. S. District Court for the District of Delaware.	
Public Utility Investing Corporation v. Utilities Power & Light Corp. et al.	U. S. District Court for the Southern District of New York.	Nov. 30, 1935.
Theodore W. Case, etc., v. Columbia Gas & Electric Company.	U. S. District Court for the Southern District of New York.	Nov. 20, 1935.
Burco, Inc., v. J. B. Whitworth and F. Donald Fenhagen, Trustees of the Estate of American States Public Service Company, The Debtor.	Circuit Court of Appeals—Fourth Circuit.	

[Copy]

105 *Exhibit I to affidavit*

Law Offices of Winthrop, Stimson, Putnam & Roberts, Mutual Life Building, No. 32 Liberty Street, New York City. Cable Address "Winstim"

NOVEMBER 29, 1935.

Hon. HOMER S. CUMMINGS,
The Attorney General of the United States,
Washington, D. C.

SIR: The Commonwealth & Southern Corporation, a Delaware corporation whom we represent, has brought suit in equity in the United States District Court for the District of Delaware praying that the Public Utility Holding Company Act of 1935 be declared to be unconstitutional and void as concerns said Company and seeking a permanent injunction against its enforcement as to it. The suit was filed on November 23rd, 1935, and the United States Attorney for the District of Delaware and the Postmaster of the City of Wilmington were served with process on that date. The Attorney

General of the United States, the Postmaster General, and the members of the Securities and Exchange Commission were also made parties, and copies of the bill of complaint were mailed on the same date to them.

The bill contains a prayer for a preliminary injunction pending the hearing and determination of the suit. It has been also the intention of the plaintiff to apply for a temporary restraining order prior to December 1st, pending the determination of the motion for a preliminary injunction.

We have advised our client that, in view of this public assurance, both the Corporation and its officers could safely rely on the pur-
pose of the Department of Justice and all United States
106 Attorneys not to institute any criminal proceedings for alleged
offenses against the Act committed prior to a determination by the Supreme Court as to its validity, and that, in our opinion, it would therefore be unnecessary to proceed with either the motion for the temporary restraining order or the motion for a preliminary injunction in the pending suit.

Very respectfully yours,

WINTHROP, STIMSON, PUTNAM & ROBERTS.

Exhibit J to affidavit

In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; AND JAMES M.

LANDIS, ROBERT E. HEALY, GEORGE C. MATHEWS, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS

107 Answer, Counterclaim and Cross-Bill. Stipulation and Order Bringing in Additional Parties as Cross-Defendants and Intervenors. Bill of Intervention of Subsidiary Companies.

In the District Court of the United States for the Southern District of New York

In Equity. No. E81-378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF,

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES
108 CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; AND JAMES M. LANDIS, ROBERT E. HEALY, GEORGE C. MATHEWS, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS.

Answer of Defendants and Invervening Defendants to the Amended and Supplemental Bill of Complaint

Defendants Electric Bond and Share Company (hereinafter called "Bond and Share"), American Gas and Electric Company (hereinafter called "American Gas"), American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation and United Gas Corporation and intervening defendants Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company,

Pacific Power & Light Company, Lehigh Power Securities Corporation, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company and Easton Consolidated Electric Company for their joint and several answer to the Amended and Supplemental Bill of Complaint (hereinafter referred to as the "Bill") herein:

(Admissions, allegations, or denials made without specification of a particular defendant or defendants are made by each defendant severally and by all defendants jointly. Allegations or denials referring to any particular defendant or defendants are made
109 by the defendant or defendants to whom the same refer and, on information and belief, are adopted by the other defendants. The intervening defendants are included within the terms "defendant" or "defendants" as used herein.)

For a first defense

1. For the purposes of this suit, and not otherwise, and reserving all objections or exceptions which might be raised as matter of law to the Bill by motion to dismiss, motion to strike, or otherwise, in this suit, and further reserving the right to deny, qualify, or explain in any future suit or proceeding between the parties hereto, or other parties, any admission hereby made, admit all the allegations (or representations) of the Bill, except as hereinafter specifically denied, subject to explanations or qualifications hereinafter made.

2. In admitting any of the allegations of the Bill, particularly but not limited to those in paragraphs III, IV, V, VII, XXIII, XXIV and XXV, which refer to or are based upon the Public Utility Act of 1935, generally referred to as the "Act", defendants allege that said Act is unconstitutional and void, and confers no rights upon plaintiff, and imposes no duties upon defendants, or any of them, for the reasons fully set forth in defendants' separate Defense, Counterclaim, and Cross-Bill (hereinafter referred to as the "separate defense") filed herewith, and hereby made a part of this Answer. The requirement of registration invoked by plaintiff herein is not separable from the other requirements and provisions of said Act, but is an integral part thereof subjecting defendants and each of them to prohibitions, disabilities, liabilities, and penalties, to which said defendants may not lawfully or constitutionally be subjected.

(In the following paragraphs of this Answer references are to the paragraph and page of the Bill which are denied, explained, or otherwise referred to in the text immediately following.)

3. Par. VI, pp. 4–6. Deny that defendant Bond and Share is a top holding company in a "holding company system" except in the limited and arbitrary sense in which the term "holding company system" is defined in the Act, and allege that, as set forth in
110 the separate defense and the exhibits thereto, the defendants and their respective subsidiary companies are separate cor-

porate entities and are separately managed and directed, and deny that defendant Bond and Share "controls" defendants American Gas, American Power & Light Company, Electric Power & Light Corporatiin, or National Power & Light Company, or any thereof, except to the extent hereinafter alleged. Deny that said defendant Bond and Share either owns or controls any electric or gas public utility company, but admits that said defendant exercises such degree of influence or control over the other defendants above mentioned, and through them of their electric and gas public utility subsidiary companies, as is inherent in defendant Bond and Share's stock ownership in such other defendants, which is set forth in paragraph VIII of the Bill. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in the management, of such other defendants or their subsidiary companies.

With reference to the allegations of paragraph VI of the Bill as to the operating revenues of the so-called "Electric Bond and Share system", defendants allege that the revenues of the operating public utility subsidiary companies within such so-called systems are derived principally from the sale of gas and electric energy, and that some part of such revenues is reflected in interest and dividend payments to the holding company defendants, and allege that defendant Bond and Share receives substantial revenues from sources other than sales of either gas or electric energy within the United States.

Deny that the electric properties in such so-called system constitute interstate groups, except in so far as transmission lines extend across state boundaries interconnecting electric generating stations and transmission and distribution systems in different states. Allege that the electric public utility companies within the seven groups referred to in the Bill, are predominantly intrastate companies engaged primarily in generation, distribution, and sale of electric power and energy within the states in which they respectively operate, subject to the jurisdiction and control of such states and the regulatory authorities thereof, and that the transmission of electric
111 energy across state boundaries is generally accomplished by the generating company for subsequent sale by it (or in some instances by associate companies) at retail within the state to which such energy is transmitted. Admit, however, that, in certain cases specifically referred to in the separate defense, and the exhibits thereto, some of the subsidiary electric utility companies of the holding companies described in the Bill do sell electric energy moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such electric utility companies are not common carriers and their interstate business, if any, is severable and distinct from their intrastate business.

Deny that the gas properties in such so-called system form interconnected interstate systems for the production and transmission of

manufactured and natural gas. Allege that some of said gas properties are entirely intrastate, both as to production, transmission and sale, and that others of said gas properties engage primarily in intrastate production, distribution, and sale of natural or manufactured gas, having as a minor and distinct portion of their business the transmission of gas produced or purchased by them in one state across a state boundary to another state, where it is distributed and sold at reduced pressure and at retail, subject to the jurisdiction and control of said state and the regulatory authorities thereof. Allege that others of said gas properties do have extensive pipe line facilities crossing state boundaries by which large amounts of gas are transmitted from one state to another, for retail sale at reduced pressure in the state to which transmitted by the same company (or in some instances by associate companies), subject to the jurisdiction and control of such state and its regulatory authorities. Admit, however, that in certain cases specifically referred to in the separate defense and the exhibits thereto, certain of such gas utility companies sell natural or manufactured gas moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such gas utility companies are not common carriers and their interstate business, if any, is severable and distinct from their intrastate business.

112 4. Par. VII, subpar. 1, p. 6. Deny that since December 1, 1935, or prior thereto, defendants Bond and Share, American Gas, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation, or Easton Consolidated Electric Company, or any of them, have engaged or will engage in selling, transporting, transmitting or distributing either natural or manufactured gas or electric energy. Deny that since December 1, 1935, or prior thereto, any of the defendants have owned or operated or will own or operate utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy in interstate commerce or across state boundaries, except that: defendants Idaho Power Company, Utah Power & Light Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Appalachian Electric Power Company, The Ohio Power Company, and The Washington Water Power Company in some instances transmit, and in other instances sell, electric energy across state boundaries, and defendant United Gas Public Service Company transmits, and in some cases sells, gas across state boundaries. Certain subsidiaries of certain of the defendants, in some cases transmit, and in some cases sell, electric energy or gas across state boundaries. The extent which these defendants, and the subsidiary companies of any of the defendants, transmit or sell electric energy or gas across state boundaries is stated in the separate defense and the exhibits thereto.

Par. VII, subpar. 2, p. 6. Deny that defendant Bond and Share is engaged or will engage in taking steps in the performance of service, sales or construction contracts, or the performance of similar contracts, but admit that Ebasco Services Incorporated, a wholly owned subsidiary company of defendant Bond and Share, is engaged and will take steps in the performance of service contracts, and that Phoenix Engineering Corporation, a wholly owned subsidiary of said Ebasco Services Incorporated, will take steps in the performance of service and construction contracts.

Deny that defendant American Gas has entered into service,
113 sales or construction contracts, but admit that it has made arrangements whereby it has made available and rendered and will continue to make available and render to its subsidiary operating public utility companies services of the nature described in paragraph XXII of the Bill.

Deny that either defendant Bond and Share or defendant American Gas or Ebasco Services Incorporated, or Phoenix Engineering Corporation, has made or will make or perform any sales contracts with public utility companies or holding companies, or is engaged in selling or will sell goods to public utility companies or holding companies.

Par. VII, subpar. 3, p. 7. Defendants are without knowledge whether they will in the future distribute or make public offerings for sale or exchange of their own securities or the securities of their subsidiary companies or affiliates, or any thereof.

Par. VII, subpar. 4, p. 7. Defendants are without knowledge whether they will in the future acquire or negotiate for the acquisition of securities of their subsidiary companies or affiliates or of public utility or holding companies.

Par. VII, subpar. 5, p. 7. Deny that either defendant Bond and Share or defendant American Gas have engaged since December 1, 1935, or will engage in business in interstate commerce.

Deny that any of the defendants have engaged or will engage in interstate commerce, except to the extent that any of the acts specified in the separate defense and the exhibits thereto, may be held to constitute interstate commerce.

Par. VII, subpar. 6, pp. 7–8. Deny that defendant Bond and Share owns, controls or holds voting securities of any electric or gas public utility company, but admit that it owns voting securities of defendant holding companies as alleged in Paragraph VIII of the Bill, which defendants in turn own voting securities of electric and gas utility subsidiary companies. The extent to which such subsidiary companies of the defendants, or any thereof, sell, transport, transmit or distribute natural or manufactured gas or electric energy, or own or operate utility assets therefor, across state boundaries, is
114 set forth in the separate defense and the exhibits thereto, and except to the extent that transactions therein set forth may

be held to constitute interstate commerce, defendants deny that subsidiary companies of said defendants are engaged in interstate commerce or in the ownership of utility assets therefor.

Par. VII, subpar. 7, p. 8. Deny that any subsidiary company of defendant Bond and Share is engaged in the performance of sales contracts or in selling goods to public utility companies or holding companies.

5. Pars. IX, X, XI, XII, and XIII, pp. 9–13. Deny the allegations of these paragraphs that defendants respectively own "substantially all" of the voting securities of the subsidiary companies so specified in said paragraphs, except to the extent stated in the separate defense, where the percentages of said securities owned by defendants are accurately set forth. In this connection defendants do not deny that the ownerships so specified are in each case sufficient to constitute voting control for the purpose of election of directors and other matters requiring stock vote.

Par. XII, subpar. 1, p. 11. Deny that United Production Corporation, Southern Gas & Fuel Company, and Compania Mexicana de Gas, S. A., are public utility companies.

Par. XIII, subpar. 1, p. 12. Deny that Susquehanna Gas Company is a public utility company. Deny that defendant Pennsylvania Power & Light Company owns any of the voting securities of The Carlisle Gas and Water Company, Columbia Gas Company, Pine Grove Electric Light, Heat & Power Company, or Shenandoah Light, Heat and Power Company, and allege that pursuant to the provisions of an order of the Public Service Commission of the Commonwealth of Pennsylvania dated November 25, 1935, such companies and the properties and business thereof were merged into or consolidated with those of defendant Pennsylvania Power & Light Company, and further allege that said defendant Pennsylvania Power & Light Company, in addition to owning all or substantially all of the voting securities of Lehighton Electric Light and Power Company, as alleged in the Bill, also owns or controls 50% of the voting securities of Stanton Operating Company and approximately 27% of the voting securities of Conestoga Transmission Company, which are electric utility companies.

115 6. Par. XIV, p. 13. Allege that the exemption of the companies named in said paragraph from the provisions of the Holding Company Act under the terms of the rule set forth in Exhibit A attached to the Bill is a temporary exemption existing in the sole discretion of the plaintiff and that such companies have no means of knowing whether said exemption will continue after February 2, 1936; that such companies are subsidiary companies of the defendant Bond and Share and of their respective holding companies, within the meaning of Section 2 (a) (8) of the Act, and are not entitled to exemption or to claim exemption as subsidiary companies under said Act, and that exemption of said companies as holding companies will be without substantial value to them if defendant Bond and Share or their respective holding companies

shall be required to register under the Act, as such companies would remain subsidiary companies subject to all or practically all the provisions of said Act.

7. Par. XV, subpar. 1, pp. 14–16. Deny that electric energy is transmitted in interstate commerce, or that lines, assets, or facilities therefor are owned, leased or operated, by the defendants or any of them or by any of their subsidiary companies except in the manner and to the extent alleged in the separate defense and the exhibits thereto and except in so far as the transactions therein described may be held to constitute interstate commerce. Defendants admit that the figures stated in the tables set forth on pages 15 and 16 of the Bill are substantially correct on the premises stated and defined on said page 15, but deny that the electric energy transmitted across state boundaries is transmitted in interstate commerce or is "interstate electric energy" except in so far as sales of such electric energy in the manner and amounts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce, and defendants refer thereto for a statement of the facts. Defendants deny that the act of selling electric energy across state boundaries in itself constitutes interstate commerce subject to Federal regulation or control.

In admitting the figures stated in the table set forth on said pages 15 and 16, defendants further allege that while the figures are approximately accurate on the basis of information available, it
116 is impossible to state such figures with complete accuracy because of mechanical difficulties of measurement, including the absence of state line meters, the records in certain cases having been kept only for the purpose of showing net deliveries or transfers. Furthermore, the figures stated include duplications of more than 1,184,000,000 kilowatt hours, substantially as follows:

American Gas and Electric System: In 1933 The Ohio Power Company delivered at or near the Ohio-Indiana boundary approximately 300,000,000 kilowatt hours to Indiana & Michigan Electric Company, which figure is included in the total quantities of electric energy and so-called interstate electric energy handled by said Indiana & Michigan Electric Company and The Ohio Power Company.

In 1933 The Ohio Power Company delivered at or near the Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to Appalachian Electric Power Company, and this transaction is included in the total quantities of electric energy and so-called interstate electric energy handled by each of said companies. In the same year, Appalachian Electric Power Company delivered at or near said Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to The Ohio Power Company and this transaction is also included in the total quantities of electric energy and so-called interstate electric energy handled by each of said companies.

American Power & Light System: Minnesota Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 18,396,000 kilowatt hours to Northern Power Com-

pany and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Northern Power Company.

Minnesota Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 12,351,000 kilowatt hours to Superior Water, Light and Power Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Superior Water, Light and Power Company.

117 Electric Power & Light System: Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Arkansas boundary approximately 164,973,000 kilowatt hours to Arkansas Power & Light Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Louisiana Power & Light Company and Arkansas Power & Light Company.

Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Mississippi boundary approximately 126,559,000 kilowatt hours to Mississippi Power & Light Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Louisiana Power & Light Company and Mississippi Power & Light Company.

National Power & Light System: In 1933 Carolina Power & Light Company delivered to Tennessee Public Service Company at or near the Tennessee-North Carolina boundary approximately 89,821,000 kilowatt hours which figure is included in the total quantities of electric energy handled, and as representing the so-called interstate electric energy handled, by said Tennessee Public Service Company and is also included in the total quantities of electric energy and the so-called interstate energy handled by said Carolina Power & Light Company.

In addition, in 1933, Carolina Power & Light Company itself delivered at a point at the North Carolina-Virginia boundary and arranged for Tennessee Public Service Company, an associate company, to deliver at Kingsport, Tennessee, approximately 260,000,000 kilowatt hours of electric energy to Appalachian Electric Power Company, and this transaction is included in the total quantities of electric energy and so-called interstate electric energy handled by both Carolina Power & Light Company and Appalachian Electric Power Company. In the same year Appalachian Electric Power Company delivered to Carolina Power & Light Company itself, or to Tennessee Public Service Company for the account of said Carolina Power & Light Company at the same points of delivery, approximately 12,500,000 kilowatt hours and this transaction is included in the total quantities of electric energy and the so-called interstate electric energy handled by both Appalachian Electric Power Company and Carolina Power & Light Company.

8. Par. XV, subpar. 2, pp. 16–17. Deny that natural or manufactured gas is transmitted in interstate commerce by
118 the gas utility companies which are subsidiary companies of defendants United Gas Corporation or American Power & Light Company or that said gas utility companies own, lease, or operate utility assets for such transmission or take part in such transmission except in the manner and to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Deny that subsidiary companies of defendant United Gas Corporation own or operate utility assets for the transmission of or transmite or take part in the transmission of natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Deny that Consolidated Gas Utilities Company is a subsidiary company of United Gas Corporation. Deny that subsidiary gas public utility companies of defendant American Power & Light Company own or operate utility assets for the transmission of or transmit or take part in the transmission of either natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Defendants deny that the act of selling gas across state boundaries itself constitutes interstate commerce subject to Federal regulation or control.

9. Par. XVI, subpar. 1, p. 18. Deny that, except as hereinafter alleged, defendant Bond and Share organized defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, or American Gas; deny that defendant Bond and Share had the purpose or intention of employing said companies as its corporate instrumentalities for the acquisition, financing, or control of operating public utility companies; deny that at the time of the organization of the said companies defendant Bond and Share acquired, by subscription or purchase, or in exchange for property, voting securities of said companies in an amount sufficient to enable it to dominate or control the affairs of said companies; deny that it retained voting securities in amounts sufficient to insure such domination and control.

Allege that, defendant Bond and Share took a leading part,
and a substantial financial interest, in organizing or
119 creating such financial or underwriting syndicates as were required or used in the organization of said defendant holding companies. In some cases defendant Bond and Share turned over to the newly organized holding companies the stock of operating public utility companies owned by it; in others, the holding companies acquired directly from former owners, other than defendant Bond and Share, the stocks of such operating public utility companies. In other cases the holding companies acquired from former owners,

other than defendant Bond and Share, some stocks of operating public utility companies, and in adition thereto defendant Bond and Share turned over to such holding companies some stocks of operating public utility companies owned by it. Upon the completion of the prerequisite financial arrangements, defendant Bond and Share became, in effect, managing agent for the said syndicates in accomplishing the organization of said holding companies. The administrative, supervisory, investigating, and clerical work was done by or under the direction of defendant Bond and Share. Defendant Bond and Share employed for the account of said syndicates, or the newly organized holding companies attorneys, auditors, engineers, and such other professional or expert services as so acquired. Said work was done for the account of each of such newly organized holding companies, and was paid for by them in such manner as may have been agreed upon in each particular case. The initial financial interest taken by defendant Bond and Share in each of said holding companies and the proportion of voting stock initially received by it or issued upon its order varied in different cases. The remainder of the original issue of securities was distributed through syndicate participations or general or limited public subscriptions under the supervision of defendant Bond and Share. The defendant Bond and Share retained the voting securities originally acquired by it, and has subsequently purchased and acquired additional voting stock of said holding companies until it now has the amounts of such stock as alleged in paragraph VIII of the Bill.

Deny that defendant Bond and Share has at any time completely dominated or controlled the corporate activities of said defendant holding companies, but admit that defendant Bond and Share has exercised and now exercises such degree of influence and control over said companies as is inherent in its ownership of the voting securities of said companies, as alleged in paragraph VIII of the Bill, such influence and control being now exercised in the manner alleged in paragraph 3 hereof.

Deny that defendant Bond and Share caused its own officers to be elected directors and officers of any of the said defendant holding companies at the time of the organization thereof, but admit that certain of its directors and executive officers were elected and remained directors and officers of each said defendant holding companies until after the passage of the Act.

Deny that since the passage of the Act defendant Bond and Share caused the resignations of officers and directors of said holding companies or the election of certain of its executive officers as officers and directors of said defendant holding companies, either to create a management subject to the domination or control of defendant Bond and Share, or otherwise, but admit that such officers and directors resigned.

Deny that the officers and directors of said defendant holding companies are persons designated by defendant Bond and Share, or are

persons subject to the direction or control of defendant Bond and Share.

10. Par. XVI, subpar. 2, p. 19. Deny that defendant Bond and Share caused defendants American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company to enter into service contracts or that pursuant thereto defendant Bond and Share performed substantially all of the activities necessary to the conduct of such companies' corporate business and functions, but admit that up to a short time prior to the filing of the original Bill of Complaint herein, such service contracts existed, and officers and employees of defendant Bond and Share acted as the officers of said defendants, and administered their corporate activities, subject to the direction and control of the directors thereof.

Deny that defendant Bond and Share assigned such service contracts with such holding companies to Ebasco Services Incorporated or that defendant Bond and Share itself or through Ebasco Services Incorporated or otherwise, does now or will continue to per-
121 form the services provided for by said contracts, and allege that such contracts were cancelled subsequent to the passage of the Act and prior to the filing of the original Bill of Complaint herein.

11. Par. XVI, subpar. 3, p. 19. Deny that the securities of the public utility companies owned by defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American Gas were either transferred to them by defendant Bond and Share or purchased by them at the instance of said defendant, except to the extent hereinbefore set forth in paragraph 9 of this Answer.

Deny that said defendant holding companies last above named perform no other function with reference to companies the stock of which is owned by them, except to serve as, or that they do serve as, a medium through which defendant Bond and Share may publicly finance the operations of operating public utility companies or through which defendant Bond and Share, either with a comparatively small investment, or otherwise, may or does dominate or control the operations of operating public utility companies, and allege that each of said defendant holding companies is separately officered, staffed, directed and financed (except that two officers and directors of defendant Bond and Share are also directors of defendant American Gas) and functions as a corporate entity separate and distinct from that of defendant Bond and Share.

Deny that defendant Bond and Share has used said defendant holding companies as instrumentalities for dominating or controlling the operations of operating public utility companies.

Deny that all important questions of business policy and personnel arising in the operations of the subsidiary public utility companies of said defendant holding companies are determined by defendant Bond and Share. Deny that said public utility com-

panies are controlled or operated as component members of a single system. The method of operation of said companies is hereinafter alleged in the separate defense and the exhibits thereto.

12. Par. XVI, subpar. 4, p. 20. Deny that defendant Bond and Share has controlled or directed or now controls or directs the operations of any operating public utility companies by means
122 of supervisory services rendered to such companies, or otherwise, or that it caused any operating public utility companies to negotiate or enter into service contracts for the performance of services substantially the same as those referred to in paragraph XVIII of the Bill, but admit that it entered into such contracts with many of such companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorporated, renders services to operating public utility subsidiary companies of the defendant holding companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, supervises, directs, or controls in any way the operations of its subsidiary operating public utility companies, but admit such supervision by Ebasco Services Incorporated as is provided for in such service contracts.

13. Par. XVI, subpar. 5, p. 21. Deny that defendant Bond and Share has controlled or directed by any means or instrumentality the business and affairs of any public utility companies; that it has caused holding companies to purchase controlling interests in public utility companies; that it has constructed or caused operating public utility companies to construct utility properties; that it has caused the purchase and construction of utility properties or that it has caused the development of interconnections between properties of public utility subsidiary companies of the defendant holding companies, but admit that there has been a development of such interconnections between such public utility properties, and that defendant Bond and Share has assisted in and exerted a substantial influence in the development of the public utility properties of subsidiary companies of the other defendant holding companies.

Deny that defendant Bond and Share, either in its own capacity or through the corporate organizations of the other defendants herein, or otherwise, is engaged or will engage in the transmission in interstate commerce of electric energy or manufactured or natural gas.

14. Par. XVI, subpar. 6, p. 21. Deny that defendant American Gas by virtue of the rendition of supervisory services or otherwise is itself engaged in the interstate transmission of electric energy.

123 15. Par. XVI, subpar. 7, p. 22. Deny that defendants Power Securities Corporation, Lehigh Power Securities Corporation, or Houston Gulf Gas Company are either themselves, or through the instrumentality of their subsidiary public utility com-

panies, engaged in the interstate transmission of electric energy or natural or manufactured gas.

16. Par. XVII, p. 22. Deny each and every allegation contained in paragraph XVII of the Bill. Allege that such services have been rendered in the past, but that the contracts therefor have been cancelled as alleged in paragraph 10 hereof and that such services are no longer rendered.

17. Par. XVIII, pp. 24–29. Deny that defendant Bond and Share, in its own name or through Ebasco Services, Incorporated, or otherwise, but admit that Ebasco Services, Incorporated, by the use of the mails or means or instrumentalities of interstate commerce, is and will be engaged in taking steps in the performance of its existing service contracts with operating public utility companies.

Deny that under such contracts defendant Bond and Share, in its own name or through Ebasco Services, Incorporated, or otherwise, undertakes to render, but admit that Ebasco Services, Incorporated, for an agreed rate of compensation based upon total monthly operating revenues undertakes to render, and does render, extensive services, and that its client operating public utility companies agree to accept such services and to pay for the same.

Admit that the service contracts now being performed by Ebasco Services, Incorporated, provide for rendering services substantially the same as those referred to in paragraph XVIII of the Bill, but allege that no executives or other members of the organizations of defendant Bond and Share or of Ebasco Services, Incorporated, are serving as officers or directors of said client operating companies doing business in the United States.

18. Par. XIX, p. 29. Deny that defendant Bond and Share itself or through the instrumentality of Ebasco Services, Incorporated, or otherwise, controls or directs the purchasing of or purchases the materials, supplies, or equipment required by operating public utility companies, but admit that Ebasco Services, Incorporated, as part of the general services rendered to its client operating public
124 utility companies, renders certain advisory and other services in connection with the purchasing of some, but not all, of the materials, supplies, and equipment required by said operating public utility companies.

Deny that defendant Bond and Share is now a party to any contracts, agreements, or understandings under which materials, supplies, or equipment are purchased by or for the account of public utility operating companies, and deny that Ebasco Services, Incorporated, is a party to any contracts, agreements, or understandings with any manufacturing company under which it undertakes to place orders with any such company for all or any material part of the supplies and equipment required by its client public utility operating companies, but admit that Ebasco Services, Incorporated, has arranged for certain contracts with one or more independent manufacturing companies under which said Ebasco Services,

Incorporated, enables its client operating public utility companies, if they so elect, to place with such manufacturing companies orders for certain but not all of the materials, supplies, and equipment which may be required by such client operating public utility companies, all as more fully set forth in paragraph 38 of the separate defense.

Deny that defendant Bond and Share, either in its own name or through the instrumentality of Ebasco Services, Incorporated, or otherwise, or that said Ebasco Services, Incorporated, purchases any materials, supplies, or equipment for the account of public utility operating companies, but admit that Ebasco Services, Incorporated, makes purchases as agent for its client companies, and, by volume contracts negotiated with manufacturing and supply companies, enables its client operating public utility companies to purchase annually materials, supplies, and equipment valued at several millions of dollars.

Deny that defendant Bond and Share or said Ebasco Services, Incorporated, either causes or will cause any of such materials, supplies, and equipment to be shipped in interstate commerce, except, as to Ebasco Services, Incorporated, to the extent alleged in said paragraph 38 of the separate defense.

19. Par. XX, p. 30. Deny that defendant Bond and Share, through Phoenix Engineering Corporation or otherwise, but admit
125 that Phoenix Engineering Corporation, in accordance with the terms of the service contracts now in effect between Ebasco Services, Incorporated, and the operating public utility companies as hereinabove set forth, in the ordinary course of its business by the use of the mails or means or instrumentalities of interstate commerce, negotiates and enters into construction contracts with operating public utility companies.

Deny that defendant Bond and Share, through Phoenix Engineering Corporation or otherwise, but admit that Phoenix Engineering Corporation, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce, is engaged in taking steps in connection with the performance of such construction contracts.

20. Par. XXI, p. 31. Deny that defendant Bond and Share and Ebasco Services, Incorporated, or either of them, have caused the securities of defendant American Gas or of its subsidiaries to be offered for sale or distributed or sold in interstate commerce, and allege that they are without knowledge whether they will take any steps in the performance of financial services for defendant American Gas or its public utility subsidiary companies.

21. Par. XXII, pp. 31–32. Deny that services rendered by defendant American Gas are performed in consideration of an agreed rate of compensation paid to defendant American Gas, and allege that such services are rendered to the operating public utility com-

panies at the cost thereof to defendant American Gas, which cost is apportioned between said companies and includes no profit or fee payable to defendant American Gas in excess of such cost.

22. Par. XXIII, pp. 33–35. Deny that defendant Bond and Share, either in its own name or through its subsidiary Ebasco Services, Incorporated, or through said Phoenix Engineering Corporation, or otherwise, since December 1, 1935 has engaged in a business in interstate commerce.

Deny that the performance of service or construction contracts by Ebasco Services, Incorporated, or Phoenix Engineering Corporation contemplates or requires a continuous or regular intercourse in interstate commerce, but admit that such contracts require the transportation across state boundaries of papers, reports and forms be-
126 tween the office of Ebasco Services, Incorporated, and its client operating companies, and admit that the information furnished by Ebasco Services, Incorporated, in connection with the exchange of apparatus results in the transportation of certain apparatus across state boundaries between the place of business of the company selling such apparatus and the place of business of the company purchasing such apparatus.

Deny that defendant Bond and Share, pursuant to these service contracts, or otherwise, sends persons from its offices in New York to operating public utility companies, but admit that Ebasco Services, Incorporated, and Phœnix Engineering Corporation are required to send, and do send, sponsors, operating specialists, engineers, and other employees from their offices in New York to the states in which such public utility companies served by them operate.

Deny that defendant Bond and Share, through its officers or employees or otherwise, performs any services pursuant to such service contracts by any means or instrumentality whatsoever, but admit that the accounting, financial, and other services performed pursuant to said contracts by the officers and employees of Ebasco Services, Incorporated, and Phœnix Engineering Corporation from the offices of said companies in New York City, for public utility operating companies in other states, are performed in part by means of interstate communication and instrumentalities of interstate commerce.

Deny that either defendant Bond and Share or said Ebasco Services, Incorporated, enters into contracts for the sale of equipment or supplies to said client operating companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services, Incorporated, or otherwise, but admit that Ebasco Services, Incorporated, in accordance with the provisions of the contracts with its client operating companies, arranges for the making of contracts under which manufacturing or other companies sell equipment and supplies to said client companies, which contracts are performed in part by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services, Incorporated, but admit that said
127 Ebasco Services, Incorporated, in accordance with the provisions of its contracts with client operating companies, arranges for the transportation by means or instrumentalities of interstate commerce of equipment and supplies to client companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorporated, in accordance with the terms of contracts with its client operating companies, furnishes information and services in connection with the exchange of apparatus by means of which purchases, sales and exchanges of second hand apparatus and materials are made between and among client companies, and between client companies and other companies, and that the conduct of such apparatus exchange contemplates and requires shipments of apparatus and materials by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or that Ebasco Services Incorporated, negotiates or takes charge of the sale or distribution in interstate commerce of securities of client operating companies, and deny that at this time either of said companies directs the sale of securities of client companies to persons in the territories which they serve.

Deny that defendant Bond and Share, either in its own name, or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, or that Ebasco Services Incorporated itself, but admit that Phoenix Engineering Corporation, purchases and arranges for the shipment of materials, supplies and equipment, by means or instrumentalities of interstate commerce as contemplated in and required by the construction contracts negotiated and entered into as hereinabove set forth.

Deny that defendant Bond and Share receives, either in its own name, or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, but admit that Ebasco Services Incorporated and Phoenix Engineering Corporation receive, compensation from their client companies for the performance of the services referred to in paragraph XXIII of the Bill.

Deny that the performance for compensation of services by
128 Ebasco Services Incorporated or by Phoenix Engineering Corporation, referred to in paragraph XXIII of the Bill constitutes a business in interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, is engaged in interstate commerce.

23. Par. XXIV, p. 35. Deny that defendant American Gas is engaged in rendering construction services for its subsidiary operating public utility companies, or that the performance of any services

rendered by it to such companies requires any intercourse or transportation in interstate commerce except of reports, stationery, forms and clerical material, the use of facilities of interstate commerce in the transportation of officers and employees, and interstate communication by use of the mails, telephone, and telegraph.

Deny that the performance of any services, as hereinbefore admitted, by defendant American Gas constitutes engaging in business in interstate commerce, or that said defendant is engaged in any business in interstate commerce.

As a Separate and Distinct Defense and by Way of Counterclaim and Cross-Bill

Defendants jointly and severally allege:

24. Defendant Bond and Share and defendants American Gas, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation, and Easton Consolidated Electric Company, which defendants other than Bond and Share are hereinafter sometimes referred to collectively as "holding company defendants", are duly organized and existing corporations, the states in which they are incorporated and of which they are citizens and residents and the locations of offices respectively maintained by them for the transaction of business being:

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Defendant	State of incorporation	Location of office
Electric Bond and Share Company	New York	New York, N. Y.
American Gas and Electric Company	New York	New York, N. Y.
American Power & Light Company	Maine	New York, N. Y.
Electric Power & Light Corporation	Maine	New York, N. Y.
National Power & Light Company	New Jersey	New York, N. Y.
United Gas Corporation	Delaware	New York, N. Y.
Power Securities Corporation	New Hampshire	New York, N. Y.
Lehigh Power Securities Corporation	Delaware	New York, N. Y.
Easton Consolidated Electric Company	New Jersey	Allentown, Pa.

Defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company, and Pennsylvania Power & Light Company, which defendants are hereinafter sometimes referred to collectively as "operating company defendants" but which are also holding companies as hereinafter set forth, are duly organized and existing corporations, the states in which they are incorporated and of which

they are citizens and residents and the locations of their respective principal offices for the transaction of business being:

Defendant	State of incorporation	Principal office
Appalachian Electric Power Company	Virginia	Roanoke, Va.
The Ohio Power Company	Ohio	Canton, Ohio.
The Scranton Electric Company	Pennsylvania	Scranton, Pa.
Atlantic City Electric Company	New Jersey	Atlantic City, N. J.
Idaho Power Company	Maine	Boise, Idaho.
Utah Power & Light Company	Maine	Salt Lake City, Utah.
United Gas Public Service Company	Delaware	Houston, Texas.
Houston Gulf Gas Company	Delaware	Houston, Texas.
The Montana Power Company	New Jersey	Butte, Mont.
Nebraska Power Company	Maine	Omaha, Neb.
Pacific Power & Light Company	Maine	Portland, Ore.
The Washington Water Power Company	Washington	Spokane, Wash.
Pennsylvania Power & Light Company	Pennsylvania	Allentown, Pa.

130 25. The plaintiff Securities and Exchange Commission is an independent agency in the executive branch of the Government of the United States with its principal office and domicile in the District of Columbia. The cross-defendants (made parties hereto by order of this Court) are administrative officers of the United States and are inhabitants of the District of Columbia. They are more particularly identified as follows: Homer S. Cummings (hereinafter referred to as the "Attorney General") is Attorney General of the United States; James A. Farley (hereinafter referred to as the "Postmaster General") is the Postmaster General of the United States; James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross (hereinafter referred to collectively as the "Commissioners") are members of and constitute the Securities and Exchange Commission.

The plaintiff and the cross-defendants threaten to perform certain acts, and to subject defendants to certain prohibitions, liabilities, and penalties, under the pretended authority of Title I of that certain Act of Congress (Public, No. 333—74th Congress—S. 2796; Title 15, Sections 79 to 79z–6, both inclusive, U. S. C. A.), entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes", approved August 26, 1935, which Title I in Section 33 thereof is designated "Public Utility Holding Company Act of 1935" and for brevity may be sometimes hereinafter referred to as the "Holding Company Act", or simply as the "Act." For reasons hereinafter set forth, the threatened acts of the plaintiff and the cross-defendants are not authorized, and said Act is unconstitutional and void. The plaintiff and the cross-defendants are, therefore, wholly without authority to do those things with which they are charged herein. There has thus arisen between the plaintiff and the defendants and between the defendants and the cross-defendants an actual controversy in which the plaintiff and the cross-defendants assert and propose to exercise, and the defendants deny, their authority to prohibit, control, regulate, or manage the business, affairs, or acts of the defendants under any of the provisions of said Holding Company Act.

26. This is a civil suit in equity, wherein the matter in controversy exceeds the sum of value of $3,000, exclusive
131 of interest and costs, arises under the Constitution and laws of the United States, and is within the equity jurisdiction of this Court. This is also a case of actual controversy involving civil and property rights of which this Court, pursuant to Section 274 (d) of the Judicial Code (Title 28, Section 400, U. S. C. A.) has jurisdiction to declare rights and other legal relations and the defendants are interested parties petitioning for such declaration and for such further relief by injunction or otherwise as may be necessary or proper.

27. Section 2(a) of Said Holding Company Act defines (in its numbered paragraphs hereinafter set forth) the following, among other, terms: (3) Electric utility company, (4) Gas utility company, (5) Public-utility company, (7) Holding company, (8) Subsidiary company, (9) Holding-company system, (10) Associate company, (11) Affiliate, (12) Registered holding company, (16) Security, (17) Voting security, (19) Service contract, (20) Sales contract, (21) Construction contract, (29) Integrated public-utility system. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2(a) of said Holding Company Act.

28. Defendant Bond and Share is a holding company, in that it owns ten per centum or more (the exact percentages being hereinafter stated in paragraph 39 and Exhibit VI hereof) of the outstanding voting securities of the following named defendants, each of which is likewise a holding company, to wit: American Gas, American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company. Defendant Bond and Share also owns approximately seven per centum of the outstanding voting securities of defendant United Gas Corporation, which is also a holding company.

Descriptions of each of said holding company defendants and of the subsidiary companies thereof and of the facts and circumstances which constitute each of said defendants herein a holding company are hereinafter set forth in paragraphs 32 to 36 hereof.

Defendant Bond and Share does not own, control, or hold with power to vote any voting securities of any of the holding company defendants or operating company defendants other than as above set forth.

132 Defendant Bond and Share's investment in the securities of the holding company defendants herein has exceeded, and now exceeds, the sum of $200,000,000. Defendant Bond and Share also owns bonds of operating public utility subsidiary companies of the holding company and operating company defendants which cost said defendant approximately $10,600,000 and which have a present value of approximately $11,700,000.

Defendant Bond and Share now has outstanding 1,155,655 shares of $6 Preferred Stock, 300,000 shares of $5 Preferred Stock and 5,267,147 shares of Common Stock held, in the aggregate, by approximately 130,000 stockholders who reside in every state in the United States and in many foreign countries. Each share of stock has one vote. More than a majority of said stockholders reside outside the State of New York, in which said defendant is incorporated. No stockholder owns more than 1.1 per centum of the presently outstanding stock of said defendant Bond and Share.

29. Defendant Bond and Share also owns more than ten per centum of the outstanding voting securities of American & Foreign Power Company Inc., which is a holding company, through its ownership of voting securities of certain holding companies and of certain public utility companies which operate solely in countries outside the boundaries of the United States.

Said defendant Bond and Share also has investments in the common stock and other securities of other public utility holding companies. These investments, while substantial in amount, are small in proportion to the aggregate voting stock of said companies and insufficient to constitute said defendant either a holding company or an affiliate of said companies as defined in said Holding Company Act, and said defendant has no service arrangement, common directors, or other affiliation with said companies except that of investment.

30. Defendant Bond and Share also owns all the outstanding capital stock of Ebasco Services Incorporated, a corporation organized under the laws of New York, which furnishes certain services, as more fully alleged in paragraph 38 hereof, to all or substantially all of the public utility companies which are subsidiary companies of the defendant holding companies above men-
133 tioned, other than defendant American Gas, to which company and its subsidiary companies no such services are furnished. Ebasco Services Incorporated in turn owns all or substantially all, of the outstanding capital stock of (a) Two Rector Street Corporation, a New York corporation which owns an office building at No. 2 Rector Street, New York, N. Y., (b) Emprezas Electricas Brasileiras, S. A., a corporation of the Republic of Brazil which renders certain services to public utility companies operating in Brazil which are indirect subsidiary companies of the above mentioned American & Foreign Power Company, Inc., and (c) Phoenix Engineering Corporation, a Delaware corporation which renders engineering services to certain of the public utility companies which are subsidiary companies of the holding company defendants.

31. By the terms of paragraph (9) of Section 2 (a) of said Holding Company Act, the defendant Bond and Share and the other holding company and operating company defendants and the subsidiary companies of said defendants, consisting principally of operating public utility companies, constitute a so-called holding com-

pany system, and each of the other defendants individually with its subsidiary holding and operating companies likewise constitutes a so-called holding company system. These companies, together with their interrelations and the principal business done by each of them, are described in the following paragraphs.

32. Defendant American Power & Light Company, hereinafter called "American Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following defendants and of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Central Arizona Light and Power Company (98.04%) generates and distributes electric energy, and distributes natural gas, solely in Arizona. Florida Power & Light Company (100%) generates and distributes electric energy and gas solely in Florida. Kansas Gas and Electric Company (90.55%) generates and distributes
134 electric energy solely in Kansas, except for the distribution of electric energy to a few customers in Missouri. Minnesota Power & Light Company (93.03%) generates and distributes electric energy in Minnesota and also makes certain sales of electric energy at the Minnesota-Wisconsin boundary. Defendant The Montana Power Company (99.75%) generates and distributes electric energy and distributes natural gas in Montana and has a subsidiary company, Idaho Transmission Company, which distributes and delivers electric energy in Idaho and has an insignificant amount of property in Montana. Montana Power Gas Company (99.99%) produces and transmits natural gas solely in Montana. Defendant Nebraska Power Company (88.39%) generates and distributes electric energy in Nebraska, sells electric energy at or near the Iowa-Nebraska boundary and has a subsidiary company, Citizens Power & Light Company, which distributes in Iowa electric energy purchased in Nebraska and owns an insignificant amount of property in Nebraska. New Mexico Electric Service Company (99.99%) generates and distributes electric energy solely in New Mexico. Northern Power Company (98.80%) transmits and distributes in Wisconsin electric energy purchased at the Minnesota-Wisconsin boundary. Northwestern Electric Company (67.63%) generates and distributes electric energy in Oregon and Washington. Defendant Pacific Power & Light Company (94.66%) generates and distributes electric energy in Washington and Oregon and has a subsidiary company, Inland Power & Light Company, which generates and distributes electric energy in Washington and generates electric energy in Oregon. Portland Gas & Coke Company (84.03%) manufactures and distributes gas solely in Oregon, except for comparatively small distribution of such gas in Washington. Superior Water, Light and Power Company (66.56%) distributes electric energy and gas in Wisconsin.

Texas Electric Service Company (98.96%) generates and distributes electric energy solely in Texas. Texas Power & Light Company (96.76%) generates and distributes electric energy solely in Texas. Texas Public Utilities Corporation (99.95%) distributes electric energy and sells natural gas at wholesale solely in Texas. Defendant The Washington Water Power Company (99.68%) generates and distributes electric energy in Washington and Idaho and has a
135 subsidiary company, Chelan Electric Company, which generates electric energy in Washington and Idaho.

Defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, and The Washington Water Power Company are holding companies in that they own all or substantially all of the voting securities of the companies above designated as their respective subsidiary companies.

None of the electric properties of the companies mentioned in this paragraph 32 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 32 into an "integrated public-utility system", as defined in Section 2 (a) (29) of the Act, which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

(a) The properties of defendants The Washington Water Power Company and The Montana Power Company, most of the properties of Pacific Power & Light Company and the properties of Northwestern Electric Company, Inland Power & Light Company, Idaho Transmission Company, and Chelan Electric Company are interconnected by means of transmission lines.

(b) The properties of Minnesota Power & Light Company, Northern Power Company, and Superior Water, Light and Power Company, are interconnected by means of transmisison lines.

(c) The properties of defendant Nebraska Power Company and its subsidiary company, Citizens Power & Light Company, are interconnected by means of distribution lines.

(d) Most of the properties of Texas Electric Service Company, Texas Power & Light Company and Texas Public Utilities Corporation, are interconnected by means of transmission lines.

A further description of said subsidiary companies of defendant American Company, and of other and non-utility direct and indirect subsidiary companies of said American Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy or gas across state boundaries is given in Exhibit I, attached hereto and by reference made a part thereof.

136 33. Defendant Electric Power & Light Corporation, hereinafter called "Electric Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following defendant and of the following electric and gas utility companies which are conducting and for several years

last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Arkansas Power & Light Company (90.22%) generates and distributes electric energy and distributes natural gas in Arkansas and both sells and purchases electric energy at state boundaries. Dallas Power & Light Company (69.98%) generates and distributes electric energy solely in Texas. Louisiana Power & Light Company (95.43%) generates and distributes electric energy and distributes natural gas in Louisiana and sells electric energy at state boundaries. Mississippi Power & Light Company (94.03%) generates and distributes electric energy and distributes natural gas in Mississippi and purchases electric energy at state boundaries. New Orleans Public Service, Inc., (95.08%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) solely in Louisiana. Defendant Utah Power & Light Company (92.38%) generates and distributes electric energy in Utah, Idaho and Wyoming and is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) Utah Light and Traction Company, which owns but has leased to defendant Utah Power & Light Company electric generating plants and distributing systems in Utah; (b) The Western Colorado Power Company, which generates and distributes electric energy in Colorado; and (c) Bountiful Light and Power Company, which distributes electric energy in Utah.

Defendant Electric Company also owns all the outstanding voting securities of holding company defendant Power Securities Corporation, which is a holding company in that it owns 71.75% of the outsanding voting securities of defendant Idaho Power Company, which generates and distributes electric energy in Idaho and Oregon.

Said defendant Idaho Power Company is also itself a holding
137 company in that it owns all or substantially all of the outstanding voting securities of its subsidiary company, Nevada Power Company, which distributes electric energy in Nevada.

Defendant Electric Company also owns 61.58% of the outstanding voting securities of defendant United Gas Corporation, referred to in paragraph 34 hereof.

None of the electric properties of the companies mentioned in this paragraph 33 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 33 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system except that:

(a) The properties of defendants Idaho Power Company and Utah Power & Light Company and the properties of Utah Light and Traction Company, Bountiful Light and Power Company, and Nevada Power Company are interconnected by means of transmission lines.

(b) The properties of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc., are interconnected by eans of transmission lines in the case of the Arkansas, Louisiana, and Mississippi companies, and in the case of the New Orleans Public Service, Inc., by means of an emergency interconnection between the Louisiana company, and the New Orleans company at the New Orleans generating station of the latter company.

A further description of said direct and indirect subsidiary companies of defendant Electric Company, and of other and non-utility direct and indirect subsidiary companies of said Electric Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy or gas across state boundaries is given in Exhibit H, attached hereto and by reference made a part hereof.

34. Defendant United Gas Corporation, hereinafter called "United Company", is a holding company in that it owns all of the outstanding voting securities of its principal subsidiary company, defendant United Gas Public Service Company, which is engaged
138 in the production of natural gas and oil and is a gas utility company engaged as such in the distribution of natural gas in Texas, Louisiana, and Mississippi and also has natural gas pipe lines which extend into Alabama and Florida.

Defendant United Gas Public Service Company is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) defendant Houston Gulf Gas Company, which is engaged in the production of natural gas and oil, is a gas utility company engaged as such in the distribution of natural gas in Texas and also is itself a holding company in that it owns all or substantially all of the outstanding voting securities of Houston Gas and Fuel Company, which distributes natural gas in Houston, Texas; (b) Northern Texas Utilities Company, which operates natural gas production and distribution facilities in Texas; and (c) Southern Gas Utilities, Inc., which operates natural gas production and distribution facilities in Texas.

Defendant United Company also owns substantial stock interests in Mississippi River Fuel Corporation, operating in Louisiana, Arkansas, Missouri, and Illinois, and El Paso Natural Gas Company, which, with its subsidiary companies, operates in New Mexico, Texas, Arizona, and the Republic of Mexico. Defendant United Gas Public Service Company also owns substantial stock interests in Monroe Gas Company and Natural Gas Company, Inc., operating in Louisiana. None of these four companies is operated as a part, or considered to be a part, of the natural gas system of said United Gas Public Service Company.

The natural gas properties of defendant United Gas Public Service Company and its several subsidiary companies above named comprise a single system for the production, transportation, and distribution of gas, such system being fully interconnected either through

transportation facilities of defendant United Gas Public Service Company and its subsidiary companies (or through transportation facilities belonging to other natural gas companies which have contracted to transport gas produced by said United Gas Public Service Company or its subsidiary companies), except in the case of a portion of said system in the Amarillo field in northern Texas
139 which is not yet physically interconnected, but which is capable of physical interconnection, with the remainder of said system.

A further description of said direct and indirect subsidiary companies of defendant United Company, and of other and non utility direct and indirect subsidiary companies of said United Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transporting or selling gas across state or international boundaries is given in Exhibit III, attached hereto and by reference made a part hereof.

35. Defendant National Power & Light Company, hereinafter called "National Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Birmingham Electric Company (100%) distributes and, in emergencies, generates electric energy solely in Alabama. Carolina Power & Light Company (93.53%) generates and distributes electric energy in North Carolina and South Carolina and both purchases and sells electric energy at state boundaries. Holston River Electric Company (100%) distributes electric energy solely in Tennessee. Houston Lighting & Power Company (91.32%) generates and distributes electric energy solely in Texas. Memphis Power & Light Company (86.79%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) in the State of Tennessee and also both sells and purchases small amounts of electric energy at state boundaries. Roanoke River Power Company (100%) owns an undeveloped hydro-electric site and adjacent lands in Virginia and North Carolina and transmits certain electric energy through Virginia for delivery to the above named Carolina Power & Light Company. Tennessee Public Service Company (99.31%) generates and distributes electricity in the State of Tennessee and purchases electric energy at the Tennessee-North Carolina boundary. West Tennessee Power & Light Company (99.99%) generates and distributes electric energy and
140 distributes natural gas (in emergencies manufactured gas) solely in Tennessee.

Defendant National Company also owns 99.66% of the outstanding voting securities of holding company defendant Lehigh Power

Securities Corporation, hereinafter called "Lehigh Company", which has as subsidiary companies: (a) defendant Pennsylvania Power & Light Company, which generates and distributes electric energy, manufactures and distributes manufactured gas and distributes natural gas in Pennsylvania, effects certain interchanges of electric energy which may or does cross state boundaries and in turn has as subsidiary companies: Lehighton Electric Light and Power Company, which distributes electric energy in Pennsylvania; Stanton Operating Company, which operates an electric generating plant in Pennsylvania, and Conestoga Transmission Company, which owns but has leased to defendant Pennsylvania Power & Light Company an electric transmission line in Pennsylvania; (b) Lehigh Valley Transit Company, which has filed a petition for reorganization under Section 77B of the Bankruptcy Act and is not a defendant herein, but which has a subsidiary company, defendant Easton Consolidated Electric Company, which in turn has a subsidiary company, The Edison Illuminating Company of Easton. Defendants Lehigh Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company are holding companies in that they each own more than 10 per centum of the voting securities of the companies above designated as their respective subsidiary companies.

None of the electric properties of the companies mentioned in this paragraph 35 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 35 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

(a) Substantially all of the properties of defendant Pennsylvania Power & Light Company and its electric utility subsidiary companies and of Lehigh Valley Transit Company are interconnected by means of transmission lines.

(b) The properties of Carolina Power & Light Company, Tennessee Public Service Company, Holston River Electric
141 Company and Roanoke River Power Company are interconnected (in part by means of transmission lines owned by other interests which have contracted to transmit electric energy for delivery to Carolina Power & Light Company) by means of transmission lines.

(c) The properties of Memphis Power & Light Company and West Tennessee Power & Light Company are interconnected by means of transmission lines.

A further description of said direct and indirect subsidiary companies of defendant National Company and of other and non-utility direct and indirect subsidiary companies of said National Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy across state boundaries is given in Exhibit IV attached hereto and by reference made a part hereof.

In addition to the companies named in said Exhibit IV, defendant National Company also owns approximately 17% of the outstanding voting securities of Memphis Natural Gas Company, a natural gas pipe line company which transmits gas from Louisiana Through Arkansas and Mississippi into Tennessee. The latter company is a controlled subsidiary company of another corporation in no way related to defendant National Company or its subsidiary companies.

36. Defendant American Gas is a holding company in that it owns all or substantially all of the outstanding voting securities of the following defendants and of the following electric utility companies which are conducting and for several years last past have conducted electric utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Defendant Appalachian Electric Power Company generates and distributes electric energy in Virginia and West Virginia, sells electric energy at wholesale in Tennessee and has subsidiary companies: Kentucky and West Virginia Power Company, Inc., which generates and distributes electric energy solely in Kentucky and Kingsport Utilities, Incorporated, which distributes electric energy solely in Tennessee. Defendant Atlantic City Electric Company generates and distributes electric energy solely in New Jersey and has a subsidiary company, Deepwater Operating Company, which op-

142 erates an electric generating plant in New Jersey. Defendant The Ohio Power Company generates electric energy in Ohio and West Virginia, distributes electric energy solely in Ohio and has a subsidiary company, Beech Bottom Power Company, Inc., which operates an electric generating plant in West Virginia. Defendant The Scranton Electric Company generates and distributes electric energy solely in Pennsylvania and has a subsidiary company, Stanton Operating Company, which operates an electric generating plant in Pennsylvania. Indiana General Service Company generates and distributes electric energy solely in Indiana. Indiana & Michigan Electric Company generates and distributes electric energy in Indiana and Michigan. Kanawha Valley Power Company operates electric generating plants in West Virginia and sells the entire output of electric energy from such plants to defendant Appalachian Electric Power Company. Southern Ohio Public Service Company operates an electric generating plant in Ohio and sells the entire output of electric energy from such plant to defendant The Ohio Power Company. Wheeling Electric Company generates electric energy in West Virginia and distributes electric energy in West Virginia and Ohio.

Defendant Appalachian Electric Power Company is a holding company in that it owns all or substantially all of the voting securities of the companies above designated as its subsidiary companies. Defendants The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company are holding companies in

that they each own 50 per centum of the voting securities of the companies above designated as their respective subsidiary companies.

The properties of all the companies mentioned in this paragraph 36 except those of defendant The Scranton Electric Company and defendant Atlantic City Electric Company are interconnected by means of transmission lines.

A further description of said subsidiary companies of the defendant American Gas and of other and non-utility direct or indirect subsidiary companies of said American Gas, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting electric energy across state boundaries is given in Exhibit V, attached hereto and by reference made a part hereof.

143 37. The investments of the holding company defendants in the securities of their subsidiary companies have amounted to, and now amount to, many millions of dollars.

The respective investments of the holding company defendants are, in each case, in common stock and in certain cases are also in bonds, notes, debentures or preferred stocks. The respective investments of the operating company defendants, in their own properties and/or in the securities of their respective subsidiary companies amount (in addition to investments represented by securities held by the holding company defendants) in each case to millions of dollars represented by bonds, stocks, and other securities held by the public. Such securities so held by the public are widely distributed in the states in which said subsidiary companies respectively operate and in other states in the United States and in some instances in foreign countries.

38. Heretofore and for many years defendant Bond and Share maintained for the benefit of all or substantially all of the public utility operating subsidiary companies of the holding company defendants (other than those of defendant American Gas), a service organization which rendered advice and counsel on operating and financial problems, technical assistance in engineering, accounting rate-making commercial and other matters, secretarial and fiscal services, which could be most advantageously conducted by a central organization. Said organization was maintained by defendant Bond and Share at its offices in New York City, and said defendant Bond and Share was compensated for said services by a fee based primarily on a percentage of operating revenues of the companies served.

Subsequent to the passage of said Holding Company Act and prior to the filing of the original Bill of Complaint herein, defendant Bond and Share transferred said service organization and assigned the contracts for such services (but not the contracts for services to the holding company defendants which were cancelled as alleged in paragraph 10 of the Answer) to its wholly-owned subsidiary company referred to in paragraph 30 hereof, to-wit, Ebasco Services, Incorporated, which has qualified to do business in the various states

in which the public utility operating subsidiary companies served by it conduct substantial operations.

144 Said Ebasco Services, Incorporated, is now rendering and proposes to continue to render the services above set forth to the operating public utility subsidiary companies of the holding company defendants other than defendant American Gas. None of said services above described constitutes interstate commerce, but in the performance of said services the mails and facilities of commerce are used. Also Ebasco Services, Incorporated, acting for its operating company clients for the purpose of placing orders in the names of said companies and not for itself or in its own behalf, negotiates contracts for the purchase of materials and supplies by such client operating public utility companies. In the rendition of these purchasing services, subsidiary companies of defendant American Gas have been, but no longer are, permitted to make purchases, and receive the benefits arising, under certain, but not all, of these contracts. Such purchases by said client operating companies include the purchase of materials and supplies which move directly in interstate commerce from the manufacturer or wholesaler to such operating companies and Ebasco Services, Incorporated, arranges for the shipment or transportation of a part of such materials and supplies. In the performance of services rendered by said Ebasco Services, Incorporated, there are employed approximately 350 individuals of whom only approximately ten are employed in the Purchasing Department thereof, and while the volume of purchases by client companies is large, the purchasing service rendered by said Ebasco Services, Incorporated, is a minor and serverable part of the total services performed by it.

Included among the operating public utility companies to which defendant Bond and Share rendered, and to which Ebasco Services, Incorporated, now renders, services as aforesaid, are all or substantially all of those named above (other than the subsidiary companies of defendant American Gas), including those which operate in countries entirely without the boundaries of the United States, those which operate entirely within a single state of the United States, and those which operate in more than one state and in the operations of which electric energy and gas are transmitted across state boundaries. For the services rendered to such operating public utility companies, service fees have been and are charged, based upon the oper-

145 ating revenues of the companies served, and said fees, which amount on the present basis to approximately 1.1 per centum of the aggregate operating revenues of such public utility companies operating in the United States, have yielded and may yield on such basis an aggregate amount in excess of the cost of rendering such services. Such fees may enter into the rates locally charged within the several states for public utility services rendered by such companies, and are subject to the jurisdiction of the proper state authorities in the several states. Said fees are not based upon and have no

relation to the generation or transmission of electric energy or gas, whether across state boundaries or otherwise.

39. Briefly, the intercorporate relations and the system of operations of defendant Bond and Share and the holding company defendants are as follows:

Defendant Bond and Share in its own corporate capacity owns the following percentages of the voting securities of the holding company defendants, to wit: defendant American Company 20.70 per centum, defendant Electric Company 47.20 per centum, defendant National Company 46.56 per centum, defendant American Gas 17.51 per centum, defendant United Company 7 per centum, defendant Power Securities Corporation none, defendant Lehigh Company none and defendant Easton Consolidated Electric Company none, and has such degree of influence and control over said companies as is inherent in such stock ownership. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in management, of such other defendants. A statement of the capitalization of said holding company defendants and the voting stock ownership therein of defendant Bond and Share is set forth in Exhibit VI, attached hereto and by reference made a part hereof. Defendant Bond and Share is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise. Although defendant Bond and Share uses the mails and other facilities of commerce as an incident to its business, its sole corporate
146 business (since the transfer of its service organization as stated in paragraph 38 hereof) is the ownership of securities in the above mentioned companies and the ownership of its other investments and the conduct of matters incidental thereto, such as the occasional lending of money, the receipt and disbursement of interest and dividend payments, and the like.

There are no directors, officers or employees common to the defendant Bond and Share or said Ebasco Services, Incorporated, and the other defendants or their subsidiary companies, except as follows: the Chairman of the Board of Directors of the defendant Bond and Share is Chairman of the Board of Directors of defendant American Gas, and one other individual, is a director of both said companies and a vice-president of defendant Bond and Share.

Of the holding company defendants above mentioned, American Company, Electric Company, National Company, United Company, Power Securities Corporation, and Lehigh Company do no other business and perform no other function than that of companies holding for investment the common stock and other securities of their subsidiary companies above described, voting such stock for the election of directors and such other corporate purposes as require stockholders vote, the occasional lending of money or lending of credit to said operating companies, collecting interest and dividends and paying same out to their creditors and stockholders. None of

them is a public utility company and none of them is engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise. They use the mails or other facilities of commerce only incidentally in furtherance of such business. They exercise voting control through stock ownership of their subsidiary operating companies, which are separately officered, staffed, directed and financed. The operating companies subsidiary to said holding companies are engaged primarily in the business of distributing electricity or gas to the public at retail under franchises or other authority of the states in which they operate. None of the officers, directors or employees of any of the subsidiary companies of the foregoing holding company defendants is an officer, director, or employee of said holding company defendants and the operations of each of said subsidiary companies are conducted entirely
147 separately, and are distinct, from the operations of said holding company defendants. Defendant Easton Consolidated Electric Company is primarily a holding company with respect to the securities of transportation companies, but also holds the securities of The Edison Illuminating Company of Easton, which owns, but does not operate, an electric distribution property as described in Exhibit IV. Said defendant's business is generally similar to that of the holding company defendants above described. It transacts no business whatever in interstate commerce.

Defendant American Gas, in addition to owning the stocks of the companies hereinabove named as its subsidiary companies and exercising voting control of said companies, furnishes, through use of its own personnel, to its subsidiary operating utility companies managerial, financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical, and other services. Various officers and directors of defendant American Gas also act as officers and directors of its public utility subsidiary companies, performing for such subsidiary companies the duties of the offices held and supplementing the local operating organizations of such subsidiary companies, which organizations are separate and distinct from those of defendant American Gas. Defendant American Gas is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise.

In addition to stock ownership in the public utility companies referred to in paragraphs 32 to 36, the holding company defendants and the operating company defendants, as well as certain of their subsidiary companies, own common stock, and, in some cases, other securities of subsidiaries which are not public utility companies as defined in said Holding Company Act.

40. As fully set forth in said Exhibits I, II, III, IV, and V the public utility companies therein and hereinabove described are, with few and unimportant exceptions, engaged primarily in the generation and distribution of electric energy, or the production and dis-

tribution of gas, within the states in which they respectively operate.

148 The generation of such electric energy or the production of such gas and the distribution thereof to the public within the several states is not and does not directly affect commerce between the states and is wholly within the jurisdiction and control of the states and the regulatory authorities thereof, within which such energy or gas is generated, produced, or distributed. Such companies as transmit electric energy or gas across state boundaries do so ordinarily and primarily for distribution at retail to customers of such companies within the states to which such energy or gas is transmitted. Such transmission of electric energy or gas across state boundaries does not constitute a sale or sales in interstates commerce and is only subject to Federal jurisdiction and regulation to the extent, if any, that such transmission across state boundaries impairs or tends to impair the safety, health, or morals of any person. Sales of electric energy or gas across state boundaries are a minor part of the business done by said public utility companies, and in practically every case a minor part of the business done by the particular company making such sales, and comprise a business which is severable from said companies' intrastate business. Said companies are doing a predominantly intrastate business within the states in which they operate subject to the jurisdiction of such states and of the regulatory authorities thereof and not to Federal jurisdiction.

41. None of the defendants has been exempted, or, under the terms of said Act, is entitled to apply for exemption from any provision of said Act under Section 3 or any other provision thereof providing for the exemption of holding companies except that the following defendants, to wit: (a) The Washington Water Power Company in the American Company group; (b) Pennsylvania Power & Light Company and Easton Consolidated Electric Company in the National Company group; and (c) Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company, in the American Gas group, are temporarily exempted as holding companies from the provisions of the Act under the terms of a rule of the plaintiff set forth in Exhibit A attached to the Bill herein, but said defendants have no means of knowing whether said exemption will continue after February 2, 1936. Further, said exemption exists and will

149 continue in the sole discretion of the plaintiff, all without judicial review, except upon issues of law, decisions of the Commission as to fact being conclusive if supported by substantial evidence.

All of the holding company defendants and the remaining companies mentioned in paragraphs 32 to 36 hereof are subsidiary companies of the defendant Bond and Share and of their respective holding companies within the meaning of Section 2 (a) (8) of said Holding Company Act and none of said companies is entitled to

exemption or to claim exemption as a subsidiary company under the terms of Sections 2 (a) (8) and 3 (b) of said Act, or otherwise, or any other section thereof. Exemption of said holding and operating company defendants as holding companies would be comparatively valueless to them as they would remain subsidiary companies subject to all, or practically all, the provisions of said Act.

42. In the course of their business, defendant Bond and Share and its subsidiary service company, Ebasco Services Incorporated, and the holding company and operating company defendants use the United States mails and the facilities of commerce for various lawful purposes, including the transportation of their officers and employees and the transmission of lawful matter affecting the business of said companies and not in any way tending to impair the safety, health, or morals of any person; said matter does not endanger the mails or the facilities of transmission thereof or the facilities of commerce, nor is such matter calculated to, nor does it, defraud or otherwise injure or offend the sender or recipient thereof, or any other person or corporation, directly or indirectly.

43. Section 4 (a) of said Holding Company Act provides that after December 1, 1935, unless a holding company is registered under Section 5 of said Act, it shall be unlawful for such holding company, directly or indirectly—

"(1) to sell, transport, transmit, or distribute, or own, or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company, or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection."

The activities forbidden by paragraphs (3), (4), and (6) of said Section 4 (a) are essential to the normal and ordinary conduct of the business of each of the defendants and the use, conservation, and development of its properties. It is essential and necessary that each of the defendants, to maintain the integrity of its property and investments, own, control, and hold with power to vote, the securities of its subsidiary companies which do the things prohibited in paragraphs (1) to (5), inclusive, of said Section 4 (a) as and to the extent hereinbefore alleged.

It is necessary for defendants, Appalachian Electric Power Company, The Ohio Power Company, Utah Power & Light Company, Idaho Power Company, Pacific Power & Light Company, and The Washington Water Power Company, themselves to transmit electric energy across state boundaries for distribution in states in which they operate, as hereinbefore averred.

It is necessary for defendants, The Montana Power Company, Nebraska Power Company, and Pennsylvania Power & Light Company, themselves to maintain and operate transmission lines
151 to points at or near state boundaries, as hereinbefore set forth, where electric energy is sold to, interchanged with, or purchased from, subsidiary companies or non-associate electric utility companies.

It is necessary for defendant United Gas Public Service Company to transport natural gas across state boundaries for distribution in states in which it operates, as hereinbefore averred.

It is necessary for defendant American Gas to use the mails and facilities of interstate commerce to perform the services which it renders to its subsidiary companies, as alleged in paragraph 39 hereof.

Section 4 (b) of said Act provides as follows:

"(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security is owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company), by persons not resident in the State in which such holding company is organized, shall register under Section 5 on or before December 1, 1935, or the thirtieth day after such company becomes a holding company, whichever date is later."

Said Section 4 (b) is applicable to each of the defendants, except defendant Easton Consolidated Electric Company, since such defendants have distributed and made the subject of public offering substantial amounts of their respective securities by use of the mails or means or instrumentalities of interstate commerce subsequent to January 1, 1925, and substantial amounts of said securities were owned or held on October 1, 1935, and are so owned or held on the date hereof by persons not resident in the respective states in which such defendants are respectively organized. By reason of the facts

in this paragraph recited such defendants are directed by the terms of said Section 4 (b) to register under Section 5 of said Act on or before December 1, 1935, even though they do not now engage, and may not in the future engage, in any commerce with foreign countries or among the several states.

An unregistered holding company which engages in any of the transaction prohibited by Section 4 (a) is within the purview of the following provisions of Section 26 (b):

152 "(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order."

Each of the defendants has existing many contracts, relationships, and practices, the performance of which involve violations of provisions of said Act, and which may also be subjected to rules, regulations or orders of plaintiff Commission which would likewise be violated. Among such contracts and relationships are those between defendant Bond and Share's wholly-owned subsidiary, Ebasco, Services Incorporated, and others of the defendants and their subsidiaries for the performance of services, and like arrangements between defendant American Gas and its subsidiaries. Such contracts and relationships are of value to the parties thereto, and their termination would result in monetary losses, and losses in economy and efficiency of operation.

An unregistered holding company and its officers and employees are also within the purview of the following penalty provisions of Section 29:

"Any person who wilfully violates any provision of this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection (b), (d), (e), or (f) of section 11), * * * shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000;

153 but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order."

Each of the defendants' officers and employees are engaged in the discharge of duties and in the performance of contracts which may

subject them to the fines and imprisonment prescribed in said section. the acts required of them in the normal discharge of their duties, subject to the penalties of said section, are many, numerous and continuous; the penalties of fines and imprisonment for successive and different acts are, or may be contended to be, cumulative, as a result of which the officers and employees of each of the defendants are presently threatened with liability of fine and imprisonment for the discharge of their normal duties, performance of company contracts, and the normal conduct of the business operations of the respective defendants; such threat or liability of fine and imprisonment has a deterring and demoralizing effect upon the personnel of the defendants, and, unless relief is granted therefrom by decree in this cause, constitutes an irreparable injury to the defendants and their properties and business.

44. Section 5 (a) of said Holding Company Act provides that on or at any time after October 1, 1935, any holding company may register by filing with the plaintiff Securities and Exchange Commission a notification of registration, in such form as said Commission may by rules and regulations prescribe, and such holding company shall be deemed to be registered upon receipt by said Commission of such notification of registration. Section 5 (b) of said Act provides that it shall be the duty of every registered holding company to file with the said Commission, within such reasonable time after registration as said Commission shall fix, a registration statement in such form as the said Commission shall prescribe, and that such registration statement shall include:

"(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as
154 the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the organization and financial structure of such companies and the nature of their business;

(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

(E) bonus and profit-sharing arrangements;

(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

(G) options in respect of securities;

(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(3) such further information or documents regarding the registrant or its associate companies of the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers."

Section 5 (c) of said Act provides that the Commission may permit a registrant to file a preliminary registration statement without
155 complying with the provisions of Section 5 (b), but that every registrant shall file a complete registration statement with the said Commission within such reasonable period of time as the Commission shall fix, but not later than one year after the date of registration.

45. In order to comply with the above described provisions of Section 5 of said Holding Company Act, it would be necessary for each of the defendants to expend very substantial sums of money to comply with the provisions of the Act with respect to registration. In order to accomplish complete registration in compliance with the foregoing statutory requirements, the defendant Bond and Share itself would be required to expend not less than $50,000; the defendant American Gas and its subsidiary companies, the operating company defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company, would be required to expend in the aggregate not less than $60,000; the defendant American Company and its subsidiary companies, the operating company defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, and The Washington Water Power Company, would be required to expend in the aggregate not less than $85,000; the defendant Electric Company and its subsidiary companies, the holding company defendants Power Securities Corporation and United Gas Corporation and the operating company defendants Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, and Houston Gulf Gas Company, would be required to expend in the aggregate not less than $60,000; the defendant National Company and its subsidiary companies, the hold-

ing company defendants Lehigh Company and Easton Consolidated Electric Company and the operating company defendant Pennsylvania Power & Light Company would be required to expend in the aggregate not less than $70,000.

46. By the terms and provisions of said Holding Company Act, each of the defendants, or any other holding company as therein defined, upon registration loses the status of a non-registered holding company and subjects itself to the jurisdiction of plaintiff Securities and Exchange Commission. Said Act attempts to make registration not merely a means for getting information, but
156 the acceptance of a license under which each of the defendants, or any holding company, is permitted to do those things prohibited by Section 4 (a) but necessary for the conduct of its ordinary business operations, only upon the terms and conditions prescribed by subsequent paragraphs of the Act, as hereinafter alleged, and generally at the will and discretion of said Commission and not as of right. The whole mechanism of the control of the operations of the defendants by plaintiff Securities and Exchange Commission is based, by the provisions of said Act, upon registration thereunder.

Immediately upon said registration and in consequence thereof, it will be and become unlawful by the terms of said Holding Company Act for any of the defendants, without the prior approval of plaintiff Securities and Exchange Commission, or in contravention of any rule, regulation or order from time to time by it deemed necessary or appropriate: (1) to issue or sell any long term security (which is defined in Sec. 2 (a) (16) to include any note, draft, stock, bond, debenture, receiver's or trustee's certificate or certificate of deposit for a security) of any such company (Sec. 6 (a)); (2) to exercise any privilege or right to alter the priority, preference, voting power or other right of the holders of any outstanding security of such company (Sec. 6 (a)); (3) to acquire, directly or indirectly, any securities or utility assets or any other interest in any business (Sec. 9 (a) (1); (4) to lend or extend its credit to or indemnify any company in the same holding company system (Sec. 12(b)); (5) to declare or pay any dividend on any security of such company or to acquire, retire or redeem any security of such company (Sec. 12 (c)); (6) to sell any security which such company owns of any public utility company or any utility asset (Sec. 12. (d)); (7) to solicit any proxy, power of attorney, consent or authorization regarding any security of such company or a subsidiary company thereof (Sec. 12 (e)); (8) to negotiate, enter into or take any step in the performance of any transaction not otherwise unlawful under said Act with any company in the same holding company system or with any affiliate of a company in such holding company system (Sec. 12 (f); or (9) to keep its accounts, correspondence, memoranda, papers, books, and other records Sec. 15 (a) and (e)).

157 Said Holding Company Act further provides, in Sec. 12(a), that it shall be unlawful for a registered holding company

to borrow money from any subsidiary company or from any public utility company in the same holding company system and, in Secs. 13 (a) and 13 (b), that, after April 1, 1936, it shall be unlawful for any registered holding company to take any step in the performance of any service, sales, or construction contract with any associate company which is a public utility company or a mutual service company, or for any subsidiary company of a registered holding company to take any step in the performance of any such contract with an associate company, except in accordance with such terms and conditions and subject to such limitations and prohibitions as plaintiff Commission shall prescribe.

Both in the matters hereinabove mentioned, and in the further provisions of the Act, particularly those of Sections 14 to 29, inclusive, under which plaintiff Commission is authorized to require registered holding companies to make various and sundry reports; to prescribe accounting systems; to make minute examinations of all correspondence, memoranda, papers, books, and records of registered holding companies and their subsidiary companies and affiliates; to investigate the business and financial condition and practices of registered holding companies and their subsidiary companies; to compel attendance of witnesses; to require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records which said Commission deems relevant and material, and to bring suits to enforce compliance with the provisions of the Act applicable to such registered holding companies, the entire business of each of the defendants would be subjected by registration to complete and virtually unlimited control of plaintiff Securities and Exchange Commission, and the actual management and direction of the business and property of defendants would be transferred from the duly authorized and responsible representatives of the owners thereof, to wit, the officers and directors of such companies, to said plaintiff Commission.

The judicial review provided for orders of said Commission by Section 24(a) of said Act is inadequate and incomplete, and is limited to review upon the law, as by the terms of said section "The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

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47. Following such registration and in consequence thereof, it will be and become the duty of plaintiff Securities and Exchange Commission by the terms of Section 11 of said Act, as soon as practicable after January 1, 1938, to cause each of the defendants to take such action as said Commission shall find necessary to limit the operations of the holding company system, of which each such defendant would be then a part, to a "single integrated public-utility system", subject to a finding by said Commission of the existence of certain arbitrarily defined conditions which are not available to defendants Bond and Share, Electric Company, National Company, and American Company, since their respective operating util-

ity companies described in paragraphs 32, 33, 34, 35, and 36 hereof do not in any case comprise a "single integrated public-utility system" as defined in Section 2(a) (29) (meaning thereby one whose utility assets are physically interconnected or capable of physical interconnection) but consist of many such systems. By the terms of said Section 11, said Commission will be required to cause the disintegration, dismemberment, or reorganization of each such defendant's so-called holding company system, so as to confine each such defendant's holdings to a single integrated public utility system, as provided in said Section 11.

Said Section 11 further provides,

"That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

"(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the
159 state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

Of the subsidiary operating public utility companies of defendant American Gas, defendants Appalachian Electric Power Company and The Ohio Power Company, together with defendant American Gas' direct subsidiary companies, Indiana & Michigan Electric Company, Indiana General Service Company, Wheeling Electric Company, Southern Ohio Public Service Company and Kanawha Valley Power Company may constitute "a single integrated public-utility system" within the meaning of said Section 11 under the definition in Section 2(a) (29) of said Act of an "Integrated public-utility system" as:

"* * * a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

The utility properties of defendants The Scranton Electric Company and Atlantic City Electric Company are not as to each other,

nor as to the system above described, a single "Integrated public-utility system" within the definition in Section 2(a) (29), but are "additional integrated public-utility systems" within the meaning of Section 11.

As a result of the foregoing, defendant American Gas' right to retain its stock ownership of any of the above companies as part of its holding company system is dependent upon plaintiff Commission's findings under Section 11, which findings are factually conclusive, and subject to no judicial review, if supported by substantial evidence.

The defendant American Gas and its subsidiary companies have no present means of knowing whether and the extent to which plaintiff Commission may leave the defendant American Gas
160 in possession, ownership, or control of any of said public utility systems, as hereinabove described and particularly the systems of the The Scranton Electric Company and Atlantic City Electric Company. Such uncertainty will exist until at least January 1, 1938 and thereafter until said Commission, after a hearing may enter its order thereon.

The respective properties of the subsidiary public utility companies of the holding company defendants United Company, Power Securities Corporation, Lehigh Company, and Easton Consolidated Electric Company and of each of the operating company defendants themselves may constitute physically interconnected properties all as hereinbefore in paragraphs 32, 33, 34, 35, and 36 hereof alleged, within the meaning of Section 11 which submits to the jurisdiction of plaintiff Commission the conclusive determination of the factual questions embodied in the definition in Section 2(a) (29) of said Act. Such defendants have no present means of knowing whether and the extent to which said Commission will find that the respective properties operated by them and their subsidiary companies constitute integrated public utility systems. Such uncertainty will exist until at least January 1, 1938, and thereafter until said Commission, after a hearing, may enter its order thereon.

Section 11 of the Act further imposes upon plaintiff Commission the duty of taking such steps as it shall find necessary to insure that the corporate structure or continued existence of any company in the holding company system of each or any of the defendants or any of its subsidiary companies does not, in the opinion of said Commission, unduly or unnecessarily complicate the corporate structure, or unfairly or inequitably distribute the voting power among security holders, of such holding company system.

The provision of said Section 11 constitute the primary and basic objective of said Holding Company Act. Section 1 (c) thereof provides—

"* * * it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as

enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in
161 activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title."

The enforcement of said Section 11 and the effectuation of the policy set forth in Section 1 (c), as above quoted, will cause, arbitrarily by legislative fiat, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, the forced sale, or other form of disposal, and the consequent sacrifice of the values of defendant Bond and Share's assets, and of the respective assets of each of the holding company defendants Electric Company, National Company, and American Company and of said defendants' respective investments in the stock of the holding companies and public utility operating companies owned by them as hereinbefore described. All of the various provisions of said Act hereinabove set forth are framed with a view to the effectuation of the policy set forth in said Section 1 (c), to be accomplished through the mandatory provisions of said Section 11. Said sections, and the threatened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, constitute an immediate and present irreparable damage and injury, and subject defendant Bond and Share and the holding company defendants Electric Company, National Company, and American Company to a present threat of dismemberment, dissolution, or reorganization, presently destroy their value as living going concerns, destroy their credit and the values of their securities and holdings, prevent their development through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business, threaten their organizations with disruption and destruction, and, if enforced, leave them with no alternative but to dissolve, go out of business, and sacrifice their investments for anything that they may bring.

162 Similarly, said sections of the Act and the threatened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, also constitute an immediate, present, and irreparable damage and injury, and subject the holding company defendants American Gas, United Company, Power Securities Corporation, Lehigh Company, and Eastern Consolidated Electric Company and each of the operating company defendants to a present threat of possible dismemberment, dissolution, or reorganization; tend to depreciate or destroy their values as living going concerns; tend to depreciate or destroy their credit and the values of their securities and holdings; tend to alter or prevent their develop-

ment through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business; threaten their organizations with disruption or destruction, and, if enforced by declaring the holding company system of any of said defendants not to be a "single integrated public-utility system", leave each such defendant with no alternative but to reorganize its properties and business on such basis as said Commission may permit and to sacrifice the investments which it may be required to dispose of for anything that they may bring.

48. Said Holding Company Act is not in truth and in fact a law; but said pretended statute is void and unconstitutional and of no force and effect for the following among other reasons, to-wit:

(1) None of the provisions of said Holding Company Act, in its application to the defendants constitutes regulation of either interstate or foreign commerce within Section 8 of Article I of the Constitution of the United States, which grants to Congress the power to regulate commerce with foreign nations and among the several states, and the meaning, purpose, and effect of all of the provisions of said Holding Company Act hereinbefore specifically recited is to prohibit or regulate the performance of acts which, in so far as they may be performed by the defendants, do not constitute commerce with foreign nations or among the several states, or directly affect such commerce. In so far as any of the companies sought to be regulated by said Act, and specifically any defendant, may be held to be in any respect engaged in interstate commerce, or in
163 so far as any of the matters or things sought to be regulated by said Act may be held to constitute regulations of interstate commerce, as applied to any company, and particularly any defendant herein, said Act is void, and in excess of the powers of the Congress, in that it attempts to regulate, without distinction and by inseparable provisions, both companies engaged in interstate commerce and companies not engaged in interstate commerce, and acts of interstate commerce and acts not of interstate commerce.

(2) Said Act, by its language, purpose and effect, attempts to regulate matters not within any of the powers conferred upon the Congress by the Constitution of the United States, and said Act, and all the provisions thereof, particularly those hereinbefore recited in paragraphs 43, 46, and 47 hereof, in violation of the Tenth Amendment to the Constitution of the United States.

(3) Said Act is an unlawful delegation of legislative powers to plaintiff Commission, and violates Section 1 of Article I of the Constitution of the United States by which legislative powers are granted to the Congress, in that no adequate standards are provided in the Act by which the action of the Commission is to be guided or controlled; by the terms of said Act, it is provided that the action of said Commission shall be such as in its uncontrolled discretion it may find necessary or appropriate "in the public interest or for the protection of investors or consumers" or "to prevent the circumvention of

the provisions of this title or the rules, regulations, or orders thereunder."

(4) The provisions of said Act which deny to non-complying companies right to use the mails or facilities of commerce in ordinary business transactions are in excess of the powers of Congress granted by Section 8 of Article I of the Constitution of the United States either to regulate commerce or to establish post offices and post roads, and constitute a deprivation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(5) The provisions of the Act hereinbefore referred to, particularly those enumerated and referred to, in paragraphs 43, 44, 46, and 47 (and the enforcement thereof as set forth in paragraphs 50 and 51) hereof, which purport to, and if enforced will, take from defendants the right and power to acquire, maintain, administer,
and dispose of their property, and to exercise ordinary pro-
164 prietary rights with respect thereto, and vest in plaintiff Commission control of such property, its acquisition and disposition, including even the capital and corporate reorganization of defendant Bond and Share and all the other defendants and the redistribution of voting power among the security holders of their respective subsidiary companies, deprive such defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States and also deprive such defendants of rights, powers, privileges, and immunities conferred upon them under and pursuant to the laws of the states in which they were respectively organized and constitute an encroachment upon the reserved powers of said states, in violation of the Tenth Amendment to the Constitution of the United States.

(6) The provisions of Section 4 (a) (2) and (6) of said Act which prohibit defendants Bond and Share and American Gas, as unregistered holding companies, by use of the mails or any means or instrumentality of interstate commerce, from taking any step in the erformance of any service, sales, or cinstruction contract or from owning securities of any subsidiary company taking any such step and the provisions of Section 13 (a) and (b) of said Act which prohibit said defendants after April 1, 1936, from taking directly any step in the performance of any such service, sales, or construction contract or from taking any such step through a subsidiary company except at cost, and then only in accordance with terms, conditions, and limitations prescribed by plaintiff Commission, destroy contract rights, presently threaten to disrupt and destroy the valuable service organizations now maintained by said defendant American Gas and by defendant Bond and Share's wholly-owned subsidiary company, Ebasco Services Incorporated, and will deprive said defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(7) In limiting review of the orders and rules of plaintiff Commission by providing that upon such review the findings of said Commission as to the facts, if supported by substantial evidence, shall be conclusive, the Act deprives defendants of their right to a judicial determination of all questions of fact affecting their constitutional rights, or affecting the jurisdiction of said Com-
165 mission to exercise the powers attempted to be delegated to it, and deprive defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(8) The provisions of Section 29 of said Act, quoted in paragraph 43 hereof, impose penalties for violation of said Act upon officers and employees of defendants, and upon defendants themselves, so excessive as to coerce compliance by defendants with the unlawful provisions of said Act, and the rules, regulations and orders of plaintiff Commission which may be made thereunder, and thus deny defendants their day in court, deprive defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States and will impose excessive fines and inflict cruel and unusual punishments upon defendants in violation of the Eighth Amendment to the Constitution of the United States.

(9) The disabilities and prohibitions imposed on nonregistered holding companies by Section 4, and the requirement of registration imposed by Section 5 of the Act, with the ensuing consequences of such registration imposed by subsequent sections hereinbefore enumerated, are referable to no Federal standard or constitutional power of the Federal government, but are arbitrary, unreasonable, and discriminatory, in that they impose, upon an arbitrarily selected group of companies in a class, disabilities, prohibitions, duties and limitations to which other companies in the same class are not subject, but from which they are exempt. Such arbitrary classification constitutes a deprivation of the liberty and property of the companies subjected thereto without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(10) By the act of registration of holding companies attempted to be imposed by Sections 4 and 5 of said Act, jurisdiction is sought to be conferred upon and acquired by the plaintiff Commission to control, regulate and manage not only the registering holding company, but also each and every of its subsidiary utility and non-utility companies, as defined in said Act, irrespective of whether or not said holding company or said subsidiary companies may do any
166 business in interstate commerce, or may otherwise be subject to Federal control and regulation. Said Act, therefore, seeks to establish Federal control of matters, persons, corporations and things in excess of the power of the Federal government under the commerce clause or any other clause of the Constitution of the United States, invades the reserved rights of the states and is in violation of the Tenth Amendment to said Constitution.

49. Being advised by counsel and believing that said Holding Company Act is wholly unconstitutional and void, and of no effect, and that registration thereunder would prejudice defendants' rights to attack the validity and constitutionality of the Holding Company Act and to full and adequate judicial relief, and adequate protection against the attempted unlawful interference by plaintiff Commission and by the Commissioners with defendants' property and business, and the imposition or attempted imposition of the penalties prescribed by the Act for refusal to conform thereto, and would involve defendants in a multiplicity of suits, defendants are constrained in protecting their constitutional rights to refrain and have refrained from registration, and do not propose, nor intend, voluntarily to register under said Act, as provided by Section 5 thereof, nor otherwise voluntarily to turn over the management of their properties or business from their boards of directors to the asserted jurisdiction of said Commission involved in such registration.

50. Defendants are informed and believe and therefore allege that plaintiff Securities and Exchange Commission, and the cross-defendants, Commissioners, Attorney General and Postmaster General, asserting their intention to enforce the provisions of the Act, have released through the press statements to the effect (quoting from the release of the Attorney General) that:

"In enforcing the Act it is proposed promptly to institute civil proceedings against one or more large and important companies who may fail to register to enforce compliance with its provisions and to seek decisions from the Supreme Court sustaining the validity of the Act. In the meanwhile it is not proposed to institute criminal proceedings, and if later it should become necessary to institute criminal proceedings against any company, it is not the intention of this department to seek to exact penalties for earlier offenses which might unduly penalize the investors in the offending company."

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and (quoting from the official Postal Bulletin dated December 5, 1935, signed by the Postmaster General):

"Whatever may be the authority, if any, of the Postmaster General to exclude from the mails matters sent in violation of the act, the Postmaster General does not intend to exclude any company from using the mails, at least not before the validity of the act is judicially determined by the Supreme Court. You will accordingly take no steps to exclude unregistered holding companies from the use of the mails."

Such statements of the Attorney General and the Postmaster General, while accepted by the defendants, do not estop said officials, or their successors in office, from instituting such proceedings, and express merely their present intention, which they may withdraw at any time. The Act imposes upon plaintiff Securities and Exchange Commission and the Commissioners and upon the Attorney General and the Postmaster General (and through them

upon United States District Attorneys and Postmasters) the legal duty of enforcement, and the defendants are informed and believe and, therefore, allege on information and belief that the Attorney General himself does not presently or without further notice propose to commence or institute any civil or criminal proceedings to enforce such Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act, and that the Postmaster General does not presently or without further notice propose to exclude any unregistered holding company from using the mails or to exclude from the mails matter sent in violation of said Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act.

But whether or not enforced by the imposition of either criminal or civil penalties, or one or a number of suits to collect fines and penalties, the existence of the provisions of such Act on the statute books, as hereinbefore alleged, constitutes an immediate, present,
and irreparable threat, damage, and injury to defendants'
168 property, and causes an immediate impairment of the value of said property and of defendants' businesses and casts a cloud on defendants' title to such property, and questions the validity of substantially every act and contract of defendants until the invalidity of such Act shall be judicially declared, all as more fully hereinbefore alleged.

Defendants are further informed and believe, and therefore allege, that, subject to the foregoing statements of immediate intention, and in their sole discretion as to time and manner, the plaintiff Securities and Exchange Commission, the Commissioners, the Attorney General, and the Postmaster General, under color of the pretended authority of said Holding Company Act contending that such Act validly confers authority upon them, are combining and conspiring together and with each other to injure, and are threatening to injure, defendants, and will, unless restrained by this Court of Equity, proceed so to do in the following manner:

(a) The plaintiff Securities and Exchange Commission intends and is threatening to issue rules, regulations, and orders applicable to defendants providing for the form and the contents of registration statements to be filed with said Securities and Exchange Commission, together with a vast number of schedules, appendices, and other documents to be attached thereto, all as provided in Section 5 (b) of said Holding Company Act and more particularly described in paragraph 44 hereof; said plaintiff Commission further intends and threatens, if defendants file with said Commission notifications of registration, to prevent, control, and regulate, subject to its arbitrary discretion, each and every act of defendants and their subsidiary companies falling within the classifications and descriptions of various acts prohibited or subjected to regulation or control by said Commission under the provisions of said Holding Company Act, which said acts are more specifically set forth in paragraphs 46

and 47 hereof; said plaintiff Commission and the Commissioners further intend and threaten, if defendants shall not file such notifications of registration, to enforce the provisions of said Holding Company Act, under the purported authority of Section 18 (f) thereof, by transmitting to the Attorney General evidence of failure to register and of acts declared unlawful by Section 4 (a) of
169 said Act, which acts are more specifically set forth in paragraph 43 hereof; (b) subject to the allegations set forth in this paragraph 50 hereof, the Attorney General intends and threatens to institute, upon receiving such reports and information from the plaintiff Commission and the Commissioners, a large number of criminal proceedings to collect the fines and impose the punishments provided for by said Act, which proceedings and the cumulative, onerous, and excessive penalties authorized by the provisions of said Act will have the effect of coercing defendants to register under said Act and to accept the rules, regulations, and orders of the plaintiff Securities and Exchange Commission and thus permit said plaintiff to regulate every detail of defendants' businesses in accordance with the arbitrary and uncontrolled discretion of said plaintiff Commission; and (c) subject to the allegations set forth in this paragraph 50 hereof, the Postmaster General intends and threatens to enforce the provisions of Section 4 (a) of said Act by preventing the defendants from using the mails to conduct the acts necessarily incidental to their businesses specifically set forth in paragraph 43 hereof, which acts are done in the lawful and necessary conduct of their business, thus altogether preventing them from carrying on their business, or any part thereof. Each and all of the foregoing threatened acts of said plaintiff Commission and of the Commissioners, the Attorney General, and the Postmaster General will result in immediate and irreparable injury, loss and damage to defendants as is hereinafter in the paragraph immediately following more specifically alleged.

51. The right of each defendant to manage its property and to conduct its business free from all interference and restraint by the plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and the Postmaster General acting under color of said Holding Company Act, is a property right of great value which will be destroyed by said plaintiff Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by said Attorney General and said Postmaster General to the irreparable injury of each such defendant, unless they are restrained from enforcing the provisions of said Act
170 against any of the defendants. The property right of each such defendant to enjoy and conduct its business free from any unlawful interference will be invaded and destroyed whether or not any such defendant shall register under said Holding Company Act, in the following manner:

(a) Even though this Court does not direct the defendants to register under said Act, the provisions of Section 4 (a), and the threatened enforcement thereof by plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and Postmaster General, will immediately impair, and threaten wholly to destroy, the value of the investment of the defendants in the securities of the companies described in paragraphs 32 to 36 hereof. As unregistered holding companies, the continued ownership by defendants on and after December 1, 1935, of said securities is made unlawful and it is also made unlawful for defendants to dispose of said securities by use of the mails or by any means or instrumentality of interstate commerce or to sell said securities in any manner having reason to believe that such securities will be resold by use of the mails or any means or instrumentality of interstate commerce, by reason whereof, and of the threatened acts of plaintiff Securities and Exchange Commission and of the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, of the Attorney General and Postmaster General, defendants will be wholly deprived of the benefits of ownership of said securities and their value to defendants will be wholly destroyed and defendants will be likewise deprived of any practicable market in which they may dispose of said securities and realize anything thereon and the property of defendants will thus be confiscated;

(b) Even though this Court does not direct the defendants to register under said Act, they will be harassed by plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and Postmaster General and subjected to a great number of civil and criminal suits and the danger of excessive and onerous penalties amounting to $200,000 for each and every offense by reason of the acts set forth in paragraph 43 hereof which it will be necessary for defendants to do in the ordinary and daily conduct of their

171 business and which are by said Act declared to be unlawful. Against such numerous suits and prosecutions, and against the threat of the excessive penalties to be imposed thereby, defendants have no adequate remedy at law;

(c) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to file a notification of registration and, subsequently, the other documents and information required under the provisions of Section 5 of said Act, they will be forced to expend in the aggregate a large sum of money, to wit, not less than $325,000 in order to prepare and compile all the information, schedules, appendices, and documents required to be contained in or filed with their complete registration statements and which sum so expended will be wasted and dissipated;

(d) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, they

will immediately be forced to institute or defend a large number of proceedings to review or to resist the enforcement of orders and regulations of said Commission, which said Commission is required to make in accordance with the provisions of said Act more particularly alleged in paragraph 46, all of which provisions, as hereinabove alleged, are in violation of the Constitution of the United States;

(e) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, the values of the property and business of defendants and of the tangible and intangible property required and used therein, and of the private funds invested and risked therein will immediately be impaired, and may eventually be destroyed, by reason of the unlawful interference by plaintiff Securities and Exchange Commission and by the Commissioners with the control and direction of defendants' property and business;

(f) If defendant Bond and Share is forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11 of said Act will require the reorganization of said defendant in such a manner that its ownership or control will be confined to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission at
172 any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately tend to destroy the value of defendant Bond and Share's said investment in the other defendants, make the financing of said companies and their subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of defendant Bond and Share's property and investment.

(g) If defendants American Company, Electric Company and National Company are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11 of said Act will require the reorganization of said defendants and their subsidiary companies mentioned in paragraphs 32, 33, 34 and 35 hereof in such a manner that the respective subsidiary companies of each of said defendants will constitute but a single integrated public utility system as defined in said Act, and will confine the ownership or control of each of said defendants to a single one of such systems (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder destroy the value of said defendants' investment in said subsidiary companies, make the

financing of said subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of said defendants' respective property and investments.

(h) If the remaining holding company defendants, American Gas, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation and Easton Consolidated Electric Company and the operating company defendants are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act and the holding company system of any of said defendants is found not to constitute a single integrated public utility system, the provisions of Section 11 of said Act
173 will require the reorganization of such defendant in such manner as to confine the ownership or control of such defendant to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commisson may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately threaten and tend to destroy such defendant's investment in its electric or gas utility properties and tend to injure and prevent the financing of such defendant and its subsidiary companies and the conduct of their public utility business and result in the present depreciation and ultimate future destruction of the value of such defendant's property and investment; and

(i) Whether defendants shall or shall not register under said Act, the provisions of Sections 4, 11, and 13 of said Act, and the threatened enforcement thereof by the plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations in paragraph 50 hereof, by the Attorney General and Postmaster General, and the onerous and excessive penalties provided for the violation thereof, will immediately impair and will progressively tend to destroy the management of defendants, and the technical and service organizations of defendant American Gas and of Ebasco Services Incorporated, which are composed of experienced and skilled persons especially trained in the duties which they perform, and upon the continued and efficient services of whom the successful operation of defendants and their subsidiary companies depends. There is every reasonable probability that such persons will not and cannot continue in their present duties, or in the efficient performance thereof, because of the mandatory dismemberment of defendants' systems in the near future, and the present threat of criminal penalties for the doing of acts which the continued performance of their duties requires.

The controversy arising upon the facts hereinbefore alleged immediately and irreparably affects the right of the defendants to con-

duct, manage, conserve, and control the disposition of their property, and the prompt determination and declaration of defendants'
174 legal rights is immediately necessary. In order to effectually preserve and protect defendants' property rights, further relief as prayed is both necessary and proper.

By reason of all the foregoing, including the continued existence of said Act and the proceedings threatened to be taken by the plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations in paragraph 50, by the Attorney General and Postmaster General thereunder, the defendants are suffering and will continue to suffer a great and irreparable injury to their property, and such injury will constitute an immediate and irreparable loss for which they have, and can have, no adequate remedy at law.

Wherefore, the premises considered, the defendants pray:

(1) That on the amended and supplemental bill of complaint and the answer herein, the amended and supplemental bill of complaint be dismissed.

(2) That on the separate defense, counterclaim and cross-bill herein:

(a) This Court enter a declaratory judgment under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stat., 955, U. S. C. A., Title 28, Section 400), that said Holding Company Act, and each and every provision thereof, is unconstitutional, void, and of no effect.

(b) This Court grant defendants after notice and hearing a temporary injunction against plaintiff Securities and Exchange Commission, enjoining said Commission, its agents and all persons acting in aid of said Commission, from making any rule, regulation, or order applicable to defendants under said Holding Company Act, and, specifically, any rule, regulation, or order under the provisions referred to in paragraphs 46 and 47 hereof.

(c) This Court grant defendants, after notice and hearing a temporary injunction against plaintiff Commission and the Commissioners, enjoining said Commission and Commissioners, and their successors in office, their agents and all persons acting in aid of them from instituting or taking any steps toward the institution of any action, proceeding or prosecution designed to compel defend-
175 ants, or the directors, officers, or employees thereof, to comply with said Act, or to compel the defendants to register under said Holding Company Act, or to enforce against defendants, or the directors, officers, or employees thereof, any penalty or other liability imposed by said Act, or authorized thereunder, on account of acts done or omitted by defendants or the directors, officers, or employees thereof; and enjoining the plaintiff Commission and the Commissioners, and their successors in office and all persons acting in aid

of it or them, from transmitting to the Attorney General, or his successors in office, any evidence of violation of said Act by the defendants or the directors, officers, or employees thereof, or in any manner from inducing said Attorney General to institute proceedings against them, or any of them.

(d) This Court grant defendants, after notice and hearing, a temporary injunction against said Attorney General, and his successors in office, and all persons acting in aid of him or his successors in office or under his superintendence or direction or the superintendence or direction of his successors in office, enjoining him and them from instituting or directing the institution of any proceeding against the defendants, or any of them, or their directors, officers, or employees, on account of any act done or omitted to be done under said Act and that this Court grant defendants, after notice and hearing, a temporary injunction against the Postmaster General and his successors in office and those acting or claiming to act under his direction or authority or under the direction or authority of his successors in office, enjoining him and them from enforcing the postal provisions of said Act by excluding from the mails any property, communication, or securities of the defendants, or any of them, or otherwise, under or by virtue of the terms or provisions or under the authority of said Holding Company Act.

(e) On final hearing this Court enter a permanent injunction to the same effect.

(f) For such other and further relief as to the Court may seem meet.

SIMPSON, THACHER & BARTLETT,
120 Broadway, New York, N. Y.,
Solicitors for all Defendants and Intervening Defendants.

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THOMAS D. THACHER,
JOHN F. MACLANE,
DOUGLAS A. CALKINS,
Of Counsel for all Defendants and Intervening Defendants.

REID & MURPHY,
A. J. G. PRIEST,
2 Rector Street, New York, N. Y.
Of Counsel for Defendants Electric Bond and Share Company, American Power & Light Company, National Power & Light Company, and Electric Power & Light Corporation.

M. F. MILLIKAN,
30 Church Street, New York, N. Y.
Of Counsel for Defendants American Gas and Electric Company, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company.

Exhibit I to answer

Properties of, and business done by, subsidiaries of American Power & Light Company

(a) Central Arizona Light and Power Company, organized under the laws of Arizona in 1920 and having its principal office and place of business in Phoenix, Arizona, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems, and a gas utility business by means of a manufactured gas plant and gas distribution systems for distributing manufactured and natural gas. All of the property of the Company used for the conduct of its electric utility business and gas utility business is located, and all of its operations are conducted, solely within the State of Arizona. The Company purchases (in Arizona) all of its natural gas requirements from Western Gas Company, a subsidiary of El Paso Natural Gas
177 Company. Such gas is transmitted into Arizona from New Mexico by said Western Gas Company. The aggregate sales of electric energy by the Company for the year 1934 were approximately 69,000,000 kilowatt hours, and its electric operating revenues were approximately $2,200,000. The aggregate operating revenues of said Company for the year 1934, including revenues from both its electric and gas utility businesses, were approximately $2,700,000.

(b) Florida Power & Light Company, organized under the laws of Florida in 1925 and having its principal office and place of business in Miami, Florida, has throughout its history conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems, and a manufactured gas utility business by means of manufactured gas plants and gas distribution systems. All of the property of the Company used for the conduct of its said electric utility business and gas utility business is located, and all of its operations are conducted, solely within the State of Florida. The aggregate sales of electric energy by the Company for the year 1934 were approximately 170,000,000 kilowatt hours, and its electric operating revenues for said year were approximately $9,000,000.

The Company also conducts an ice business solely within the State of Florida and owns all or substantially all of the stock of three subsidiary companies rendering water and transportation service solely within the State of Florida. The aggregate operating revenues of the Company, including the revenues from its electric and gas utility and ice businesses were approximately $10,600,000 for the year 1934, and the aggregate operating revenues of said three subsidiaries for said year were approximately $1,100,000.

(c) Kansas Gas and Electric Company, organized under the laws of West Virginia in 1909 and having its principal office and place of business in Wichita, Kansas, has for many years conducted and

still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Kansas, except that certain lines extend into the State of Missouri for the distribution of electric energy to a few customers in Missouri. The Company also has a transmission
178 line extending to the Kansas-Oklahoma boundary which is used to provide temporary emergency interchange connections with a non-associate electric utility company having properties in Oklahoma and also has facilities for establishing temporary emergency interchange connections in Kansas with two other non-associate electric utility companies. The aggregate sales of electric energy by the Company in Kansas for the year 1934 were approximately 197,000,000 kilowatt hours and the operating revenues therefrom were approximately $5,000,000. The aggregate sales of electric energy by the Company in Missouri for the year 1934 were approximately 6,000,000 kilowatt hours and the operating revenues therefrom were approximately $80,000. All of the electric energy sold by the Company in Missouri is sold at distribution voltages. The sales of electric energy over the Company's transmission line extending to the Kansas-Oklahoma boundary in the year 1934 amounted to approximately 100,000 kilowatt hours and represented transformer losses only. In addition thereto, there was an unavoidable interchange at said point incident to voltage regulation.

(d) Minnesota Power & Light Company, organized as Duluth-Edison Electric Company under the laws of Minnesota in 1906 (name changed to Minnesota Power & Light Company in 1923) and having its principal office and place of business at Duluth, Minnesota, has for many years conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems, located solely within the State of Minnesota. Certain of the Company's transmission and distribution lines extend to the Minnesota-Wisconsin boundary where certain electric energy is sold at wholesale for resale to Northern Power Company and (through the latter Company) to Superior Water, Light, and Power Company, associate electric utility companies. The aggregate sales of electric energy by the Company at the Minnesota-Wisconsin boundary for the year 1934 were approximately 35,000,000 kilowatt hours, and the revenues therefrom were approximately $420,000. The aggregate sales of electric energy by the Company in the State of Minnesota, including such sales at said boundary for the year 1934 were approximately 272,000,000 kilowatt hours, and its electric operating revenues were approximately $5,300,000. The Company also renders steam heating service in certain communi-
179 ties in Minnesota. In 1935 the Company's sales of electric energy in Minnesota itself increased approximately 30 percent.

(e) The Montana Power Company, organized under the laws of New Jersey in 1912 and having its principal office and place of business in Butte, Montana, has for a number of years conducted, and

still conducts, an electric utility business by means of generating stations, transmission lines, and distribution systems and a natural gas utility business by means of gas distribution systems, all of the Company's gas requirements being purchased in Montana from an associate company. All of the properties used for the conduct of the Company's electric utility business and gas utility business are located solely within Montana. One of the Company's electric transmission lines extends to a point in Montana near the Idaho-Montana boundary, at which point electric energy is delivered to Idaho Transmission Company, a subsidiary electric utility company, for delivery by it to customers of The Montana Power Company in Idaho. The Company also delivers, at a point in Montana, to a non-associate railroad company, a small amount of electric energy for redelivery by said railroad company to Idaho Transmission Company at a point in Idaho. The aggregate sales of electric energy by said Company in Montana, exclusive of electric energy so delivered to Idaho Transmission Company, for the year 1934 were approximately 690,000,000 kilowatt hours and its electric operating revenues were approximately $7,540,000. The amount of electric energy delivered to Idaho Transmission Company for redelivery for the account of said The Montana Power Company in the State of Idaho for the calendar year 1934 was approximately 17,000,000 kilowatt hours and the revenues therefrom were approximately $110,000. The Company also renders water and irrigation service and steam heating service in certain communities solely in Montana. The aggregate operating revenues of the Company, including the revenues from its electric utility business, gas utility business, and water irrigation and steam heating service, were approximately $9,010,000 for the year 1934. There have been no changes in the character of the Company's business in 1935, but kilowatt hour sales and revenues have been substantially higher, a prolonged strike in an important industry having reduced sales and revenues in 1934.

180 The Montana Power Company also owns all, or substantially all, of the stock of, and controls the operations of, Idaho Transmission Company, a corporation organized under the laws of Montana. Idaho Transmission Company conducts an electric utility business by means of transmission lines and a distribution system located solely within Idaho, except that one transmission line extends over the Montana-Idaho boundary line for a distance of approximately 10 feet, where it interconnects with a transmission line of The Montana Power Company. The principal business of Idaho Transmission Company is the delivery of electric energy received from The Montana Power Company in Montana to mining customers of The Montana Power Company in the State of Idaho and the interchange of electric energy with The Washington Water Power Company, an associate company, for account of The Montana Power Company. In the year 1934 Idaho Transmission Company so delivered to customers of The Montana Power Company approximately

17,000,000 kilowatt hours and interchanged with The Washington Water Power Company approximately 140,000 kilowatt hours in deliveries and 110,000 kilowatt hours in receipts, and for this service it received from The Montana Power Company approximately $37,000 in service charges and rentals. Idaho Transmission Company also owns and operates a small distribution system in Avery, Idaho, over which in the year 1934 it sold approximately 50,000 kilowatt hours, receiving revenues from such sales of approximately $3,000. The electric energy so sold was received from The Montana Power Company over a transmission line belonging to a nonassociate railroad company. Application has been made to the Federal Power Commission for permission to transfer all the properties of Idaho Transmission Company to The Montana Power Company. In 1935 receipts of electric energy from The Washington Water Power Company were substantially increased.

The Montana Power Company also owns all or substantially all of the capital stock of Rocky Mountain Power Company, a Delaware corporation which owns a partially constructed hydro-electric development in Montana.

(f) Montana Power Gas Company, organized under the laws of New Jersey in 1932 and having its principal office and place
181 of business in Butte, Montana, has throughout its history conducted, and still conducts, a natural gas business by means of natural gas production and transmission facilities located solely within the State of Montana. The Company also purchases substantial amounts of natural gas from sources solely within the State of Montana. The aggregate sales of gas by said Company for the year 1934 were approximately 4,900,000 thousand cubic feet. The operating revenues of said Company from all sources for said year were approximately $960,000. There have been no changes in the character of the Company's business in 1935, but its sales and revenues have increased substantially. A large part of this Company's gas sales were to an associate company, The Montana Power Company, which conducts a retail gas utility business in Montana. As an incident of and in connection with its gas business Montana Power Gas Company also extracts gasoline and butane from natural gas, owns and operates certain oil production facilities located solely within the State of Montana, and sells oil, butane and natural gas gasoline.

(g) Nebraska Power Company, organized under the laws of Maine in 1917 and with its principal office and place of business at Omaha, Nebraska, has for many years conducted, and still conducts, an electric utility business by means of a generating plant and transmission lines and distribution systems located solely within the State of Nebraska. The Company sells certain electric energy (approximately 26,000,000 kilowatt hours in 1934) at its generating plant at wholesale for resale to its subsidiary, Citizens Power & Light Company, near the Iowa-Nebraska boundary and also sells (approximately 23,000,000 kilowatt hours in 1934) electric energy at wholesale for

resale to a non-associate electric utility having properties in Nebraska and Iowa at another point in Nebraska near said Iowa-Nebraska boundary. The sales of electric energy so made were approximately 49,000,000 kilowatt hours in the year 1934, with revenues therefrom of approximately $420,000. The aggregate sales of electric energy by the Company in Nebraska in 1934, including such sales at wholesale, were approximately 320,000,000 kilowatt hours and its electric operating revenues were approximately $6,500,000.

Nebraska Power Company owns all or substantially all the
182 capital stock of, and controls the operations of, Citizens Power & Light Company, a New Jersey corporation which conducts an electric utility business by means of a distribution system in and near the City of Council Bluffs, Iowa, including a distribution line which crosses the Iowa-Nebraska boundary and extends into Nebraska a distance of approximately 700 feet to the generating station of Nebraska Power Company by means of which it purchases its requirements of electric energy from said Nebraska Power Company. Citizens Power & Light Company also transfers a small amount of electric energy from Nebraska (included in the total of 49,000,000 kilowatt hours sold by Nebraska Power Company as set forth above) for the account of a non-associate company, but makes all of its sales of electric energy in the State of Iowa. The aggregate sales of electric energy by said Citizens Power & Light Company in 1934 were approximately 22,000,000 kilowatt hours and its electric operating revenues were approximately $820,000.

(h) New Mexico Electric Service Company, organized under the laws of New Mexico in 1930, and having its principal office and place of business in Hobbs, New Mexico, has throughout its history conducted and still conducts an electric utility business by means of generating plants and distribution systems located, and operations carried on, solely within the State of New Mexico. The aggregate sales of electric energy by said Company for the calendar year 1934 were approximately 2,200,000 kilowatt hours, and its electric operating revenues for said year were approximately $87,000. There have been no changes in the character of the Company's business in 1935, but its kilowatt hour sales and revenues have increased substantially.

(i) Northern Power Company, organized under the laws of Wisconsin in 1906 and having its principal office and place of business at Superior, Wisconsin, has for many years conducted, and still conducts, an electric utility business by means of distribution lines located solely within the State of Wisconsin. Certain of such lines extend to the Wisconsin-Minnesota boundary and are used solely for receiving electric energy at said boundary from Minnesota Power & Light Company for redelivery to Superior Water, Light and Power Company and for distribution and sale to consumers, all within the State of Wisconsin. The aggregate amount of elec-
183 tric energy transported from said boundary by said Company over said lines in the year 1934 amounted to approximately

35,000,000 kilowatt hours. Of this amount, approximately 13,000,000 kilowatt hours were so redelivered to Superior Water, Light and Power Company and the remainder were used by the Company itself for distribution to its own customers. The Company received $6,000 for such redelivery service in 1934 and its total operating revenues in that year, excluding the payment for such redelivery service, were approximately $306,000.

(j) Northwestern Electric Company, organized under the laws of Washington in 1911 and with its principal office and place of business at Portland, Oregon, has since its organization conducted and still conducts an electric utility business by means of steam and hydro-electric generating plants, transmission lines, and distribution systems located within the States of Oregon and Washington. The Company owns certain transmission lines which cross the Oregon-Washington boundary and are used for transmitting substantial amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale. The Company in 1934 purchased the major part of its energy requirements in Washington from associate companies, such purchases including large amounts of surplus energy temporarily available at low cost which made it advantageous for the Company to limit the operation of its Oregon steam-electric generating plants to the furnishing of stand-by service.

The division of the Company's electric business between the states of Oregon and Washington in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Oregon, 62%; Washington, 38%; Electric energy generated and purchased: Oregon, 1%; Washington, 99%; Electric energy sales: Oregon, 49%; Washington, 51%; Average maximum firm power demand: Oregon, 65%; Washington, 35%; Electric revenue: Oregon, 73%, Washington, 27%; Customers: Oregon, 79%; Washington, 21%. The aggregate sales of electric energy by the Company in Oregon and Washington in 1934 were approximately 135,000,000 kilowatt hours in the case of Oregon, with electric operating revenues therefrom of approximately $2,360,000 and approxi-
184 mately 140,000,000 kilowatt hours in the case of Washington with electric operating revenues therefrom of approximately $870,000. The Company transferred across the Oregon-Washington boundary for its own account in 1934 approximately 156,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy at wholesale for resale in that year, involving in part the incidental movement of electric energy across state boundaries, were approximately 25,000,000 kilowatt hours (consisting principally of temporarily available surplus energy) and the aggregate revenues therefrom were approximately $62,000, or less than 2% of the Company's aggregate electric operating revenues in that year. Approximately 89% of the energy sold in Washington represents sales to two high-load-factor industrial power users and sales of temporarily available surplus energy.

Northwestern Electric Company also has carried on for a number of years and still carries on the business of supplying steam heat in the City of Portland, Oregon. The aggregate operating revenues of the Company in 1934, including the operating revenues from said steam heating service, were approximately $3,530,000.

(k) Pacific Power & Light Company, organized under the laws of Maine in 1910 and having its principal office and place of business at Portland, Oregon, has for a number of years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located within the States of Oregon and Washington. The Company owns certain transmission lines which cross the Oregon-Washington boundary and are used for transmitting certain amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale.

The division of the Company's electric business between the states of Oregon and Washington in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Oregon, 46%; Washington, 54%; Electric energy generated and purchased: Oregon, 38%; Washington, 62%; Electric energy sales: Oregon, 28%; Washington, 72%; Electric revenue: Oregon, 40%; Washington, 60%; Customers: Oregon, 38%; Washington, 62%. The aggregate sales of electric energy by the Com-
185 pany in Oregon and Washington in 1934 were approximately 52,000,000 kilowatt hours in the case of Oregon, with electric operating revenues of approximately $1,600,000 and approximately 134,000,000 kilowatt hours in the case of Washington, with electric operating revenues of approximately $2,400,000. The Company transferred across the Oregon-Washington boundary for its own account in 1934 approximately 47,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy at wholesale for resale in that year, involving in part the incidental movement of electric energy across state boundaries, were approximately 45,000,000 kilowatt hours (consisting principally of temporarily available surplus energy) and the aggregate revenues therefrom were approximately $108,500, or less than 3% of the Company's aggregate electric operating revenues in that year. The Company, which also renders certain steamheating and water service, in 1934 purchased a large part of its energy requirements from associate electric utility companies.

Pacific Power & Light Company owns all or substantially all of the capital stock of, and controls the operations of, Inland Power & Light Company, an Oregon corporation which owns a large hydroelectric generating station in Washington and two small hydroelectric generating stations in Oregon, as well as a transmission line in Washington. Inland Power & Light Company sells electric energy (at its generating stations) to Pacific Power & Light Company and to the associate Northwestern Electric Company, its sales to and revenues from said Companies, respectively, in the year 1934 having been

approximately 3,000,000 kilowatt hours with approximately $20,000 of revenue therefrom and 177,000,000 kilowatt hours (including substantial quantities of surplus energy) with approximately $540,000 of revenue therefrom.

(l) Portland Gas & Coke Company, organized under the laws of Oregon in 1910 and having its principal office and place of business in Portland, Oregon, has for many years conducted and still conducts a gas utility business by means of manufactured gas plants, transmission mains, and distribution systems located entirely in the State of Oregon, except that its distribution system extends across the Oregon-Washington boundary line for the purpose of serving customers of the Company in one community in the State
186 of Washington. The Company serves approximately 2,000 customers in the State of Washington and the aggregate sales of gas by the Company for the year 1934 in Washington were approximately 58,000 thousand cubic feet and the gas operating revenues therefrom were approximately $63,000. The Company serves approximately 80,000 customers in the State of Oregon and the aggregate sales of gas for the year 1934 in that State were approximately 2,500,000 thousand cubic feet and the gas operating revenues therefrom were approximately $2,600,000. The Company also carries on the manufacture and sale of carbon briquets and other by-products derived from the manufacture of gas. Its aggregate operating revenues from the sales of gas and of by-products amounted to approximately $3,000,000 for the year 1934.

(m) Superior Water, Light and Power Company, organized under the laws of Wisconsin in 1889 and having its principal office and place of business in Superior, Wisconsin, has for many years conducted, and still conducts, an electric utility business by means of a stand-by generating station and a distribution system and a gas utility business by means of a gas distribution system, all of such property being located solely within the State of Wisconsin. Except during periods of emergency, the Company obtains its requirements of electric energy from Minnesota Power & Light Company, an associate company, which energy is delivered to the Company, within the State of Wisconsin, by Northern Power Company, also an associate company. All of the electric energy so purchased by the Company is distributed by the Company in the State of Wisconsin. The aggregate sales of electric energy by said Company for the year 1934 were approximately 11,000,000 kilowatt hours and its electric operating revenues were approximately $501,000. The Company also renders water service in the State of Wisconsin, and in connection therewith pumps water from wells located in the State of Minnesota, but renders no water service outside of the State of Wisconsin. The Company purchases its manufactured gas requirements from a non-associate company at the Minnesota-Wisconsin boundary. The aggregate operating revenues of said Company, including the revenues from its electric business, gas business, and water business, were approximately $905,000 for the year 1934.

187 (n) Texas Electric Service Company, organized under the laws of Texas in 1929 and having its principal office and place of business in Fort Worth, Texas, has conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company in the year 1934 were approximately 283,000,000 kilowatt hours, with electric operating revenues of approximately $6,470,000. For a number of years the Company also distributed electric energy at retail in Piedras Negras, Mexico, but has sold all its properties in Mexico.

(o) Texas Power & Light Company, organized under the laws of Texas in 1912 and having its principal office and place of business in Dallas, Texas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company for the year 1934 were approximately 350,000,000 kilowatt hours, and its electric operating revenues were approximately $9,100,000.

(p) Texas Public Utilities Corporation, organized under the laws of Texas in 1926 and having its principal office and place of business in Dallas, Texas, has throughout its history conducted, and still conducts, an electric utility business by means of a stand-by generating station and a distribution system located, and operations carried on, solely within the State of Texas. Except during periods of emergency the Company purchases in Texas its entire requirements of electric energy for electric utility purposes from an associate electric utility company, the above-named Texas Power & Light Company. The aggregate sales of electric energy by the Company in 1934 were approximately 1,400,000 kilowatt hours and its electric operating revenues for said year were approximately $75,000. The Company also renders water service and ice service solely within the State of Texas. The Company buys natural gas at wholesale, from a non-associate company operating solely within the State of Texas, and resells such natural gas at wholesale, solely within the State of Texas, but it neither owns nor operates any facilities
188 for distribution of natural gas. The aggregate operating revenues of the Company for the year 1934, including the revenues from its gas, water, ice, and electric businesses, were approximately $1,100,000.

(q) The Washington Water Power Company, organized under the laws of Washington in 1889 and with its principal office and place of business at Spokane, Washington, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the states of Washington and Idaho. The Company owns certain transmission lines which cross the Washington-Idaho bound-

ary and are used for transmitting certain amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale. The Company's transmission system is interconnected with the transmission systems of the associate Pacific Power & Light Company in Washington and the associate Idaho Transmission Company in Idaho for sale of electric energy to and interchange of electric energy with said associate companies.

The division of the Company's electric business between the states of Washington and Idaho in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract, Washington 89%, Idaho 11%; Electric energy generated and purchased, Washington 97%, Idaho 3%; Electric energy sales, Washington 74%, Idaho 26%; Electric revenues, Washington 78%, Idaho 22%; Customers, Washington 82%, Idaho 18%. The aggregate sales of electric energy by the Company in Washington and Idaho in 1934 were approximately 460,000,000 kilowatt hours in the case of Washington, with electric operating revenues of approximately $5,200,000, and approximately 160,000,000 kilowatt hours in the case of Idaho, with electric operating revenues of approximately $1,500,000. The Company transferred across the Washington-Idaho boundary for its own account in 1934 approximately 233,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy in that year at or across state boundaries at wholesale for resale were approximately 10,400,000 kilowatt hours (including substantial quantities of surplus power) and the aggregate revenues therefrom were approximately $52,000, or less than
189 1% of the Company's aggregate electric operating revenues in that year. The Company also renders certain local water service in Idaho and Washington. In 1935 the Company also sold through Idaho Transmission Company to The Montana Power Company for resale approximately 12,300,000 kilowatt hours, its revenues therefrom having been approximately $37,000.

The Washington Water Power Company owns all or substantially all of the common stock of, and controls the operations of, Chelan Electric Company, a Washington corporation which owns a large hydro-electric generating station in the State of Washington and smaller hydro-electric generating stations in the State of Idaho. All electric energy generated by Chelan Electric Company is delivered (at its generating stations) to The Washington Water Power Company.

The Washington Water Power Company also owns all or substantially all of the outstanding capital stock of, and controls the operations of, Spokane Central Heating Company and Spokane United Railways which, respectively, render steam heating service and transportation service in the City of Spokane, Washington. The operating revenues of said three subsidiary companies in the year 1934 were approximately $1,300,000, of which $300,000 represented intercompany transactions.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of American Power & Light Company do not include certain minor companies holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of franichise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of American Power & Light Company, herein described to that Company and to one another.

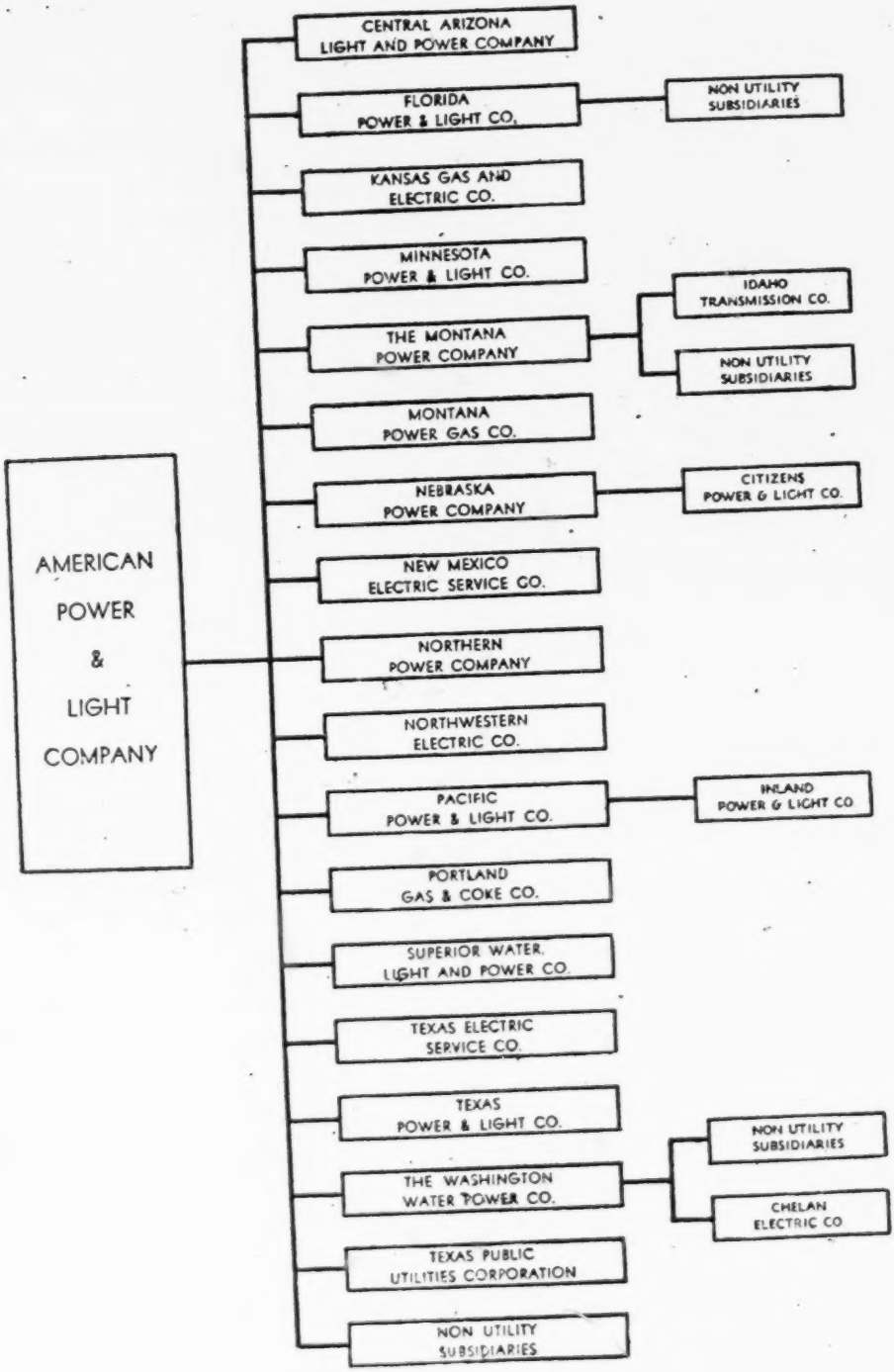
(Here follows 1 photo, folio 189½.)

190 *Exhibit II to answer*

Properties of, and Business Done by, Subsidiaries of Electric Power & Light Corporation

(a) Arkansas Power & Light Company, organized under the laws of Arkansas in 1926, with its principal office and place of business at Pine Bluff, Arkansas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Arkansas and a gas utility business by means of natural gas distribution systems also located solely within the State of Arkansas. Certain of the Company's transmission lines extend to the Arkansas-Louisiana boundary, to the Arkansas-Mississippi boundary and to the Arkansas-Tennessee boundary, and are used for the purpose of selling electric energy to, and receiving electric energy from other electric utility companies having properties outside the State of Arkansas.

The Company in the year 1934 generated with its own facilities and purchased from sources within the State of Arkansas approximately 100,000,000 kilowatt hours of electric energy, and purchased at state boundaries approximately 222,000,000 kilowatt hours generated outside the State of Arkansas. All of the electric energy so generated and purchased was sold in the State of Arkansas, except approximately 7,700,000 kilowatt hours sold to associate companies at wholesale for resale over the Company's said transmission lines extending to the Arkansas-Louisiana, Arkansas-Mississippi, and Arkansas-Tennessee boundaries. The Company's aggregate electric operating revenues in 1934 were approximately $5,900,000, includ-


AMERICAN POWER & LIGHT COMPANY
CENTRAL ARIZONA LIGHT AND POWER COMPANY
FLORIDA POWER & LIGHT CO.
NON UTILITY SUBSIDIARIES
KANSAS GAS AND ELECTRIC CO.
MINNESOTA POWER & LIGHT CO.
THE MONTANA POWER COMPANY
IDAHO TRANSMISSION CO.
NON UTILITY SUBSIDIARIES
MONTANA POWER GAS CO.
NEBRASKA POWER COMPANY
CITIZENS POWER & LIGHT CO.
NEW MEXICO ELECTRIC SERVICE CO.
NORTHERN POWER COMPANY
NORTHWESTERN ELECTRIC CO.
PACIFIC POWER & LIGHT CO.
INLAND POWER & LIGHT CO.
PORTLAND GAS & COKE CO.
SUPERIOR WATER, LIGHT AND POWER CO.
TEXAS ELECTRIC SERVICE CO.
TEXAS POWER & LIGHT CO.
THE WASHINGTON WATER POWER CO.
NON UTILITY SUBSIDIARIES
CHELAN ELECTRIC CO.
TEXAS PUBLIC UTILITIES CORPORATION
NON UTILITY SUBSIDIARIES

ing approximately $100,000 derived from stand-by service and sales of electric energy at state boundaries, and the amount which it paid for energy purchased at state boundaries was approximately $790,000. The Company also transferred over its own lines through Arkansas to a point or points at a state boundary energy received at a state boundary for redelivery to, or for the account of, other electric utility companies from which such energy was received. The amount of electric energy so transferred in the year 1934 was approximately 80,000,000 kilowatt hours.

191 The Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants, and rendering steam heating and transportation service, all in various communities within the State of Arkansas. The aggregate operating revenues of the Company, including the revenues from the electric, gas, water, steam-heating, transportation, and ice business done by the Company, were approximately $7,400,000 for the year 1934.

Arkansas Power & Light Company owns all or substantially all of the capital stock of The Garland Power and Development Company of Arkansas, an inactive company, which owns certain non-utility land in the State of Arkansas and which also owns 100% of the capital stock of White River Power Company, which, in turn, has certain rights and has made sundry investigations, etc., in connection with a proposed hydro-electric development on the White River in the State of Arkansas. The Garland Power and Development Company also owns all or substantially all the capital stock of Capital Transportation Company, which owns, or operates under lease, transportation facilities in the State of Arkansas.

(b) Dallas Power & Light Company, organized under the laws of Texas in 1917 and with its principal office and place of business at Dallas, Texas, has for many years conducted, and still conducts, an electric utility business by means of a generating plant, transmission lines, and a distribution system located, and operations conducted, solely within the State of Texas. The aggregate sales of electric energy by the Company in the year 1934 were approximately 200,000,000 kilowatt hours and its electric operating revenues were approximately $5,200,000.

(c) Louisiana Power & Light Company, organized under the laws of Florida in 1927 and with its principal office and place of business at Algiers, Louisiana, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Louisiana and a gas utility business by means of natural gas distribution systems also located solely within the State of Louisiana. The Company has transmission lines extending to

192 the Louisiana-Arkansas boundary and to the Louisiana-Mississippi boundary which are used principally for the purpose of selling electric energy to associate electric utility companies having properties, respectively, in said States of Arkansas and Missis-

sippi. The Company purchases (in Louisiana) the major portion of its natural gas requirements, for resale within the State of Louisiana, from, or from a subsidiary of, United Gas Public Service Company, an associate natural gas company.

The aggregate sales of electric energy at wholesale for resale over the Company's said transmission lines extending to said Louisiana-Arkansas and Louisiana-Mississippi boundaries were approximately 360,000,000 kilowatt hours in the year 1934 and the revenues therefrom were approximately $1,500,000. In the year 1934, Company also purchased approximately 5,000,000 kilowatt hours over said lines. The aggregate sales of electric energy by the Company in the State of Louisiana and over said transmission lines extending to said state boundaries were approximately 550,000,000 kilowatt hours in 1934 and the electric operating revenues therefrom were approximately $4,500,000. The Company also transferred over its own lines through Louisiana to a point or points at a state boundary electric energy received at a state boundary for re-delivery to an associate company from which such energy was received. The amount of electric energy so transferred in the year 1934 was approximately 1,347,000 kilowatt hours.

The Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants, and rendering transportation service, all in various communities within the State of Louisiana. The aggregate operating revenues of the Company, including the revenues from the electric, gas, water, transportation, and ice businesses done by the Company, were approximately $5,500,000 for the year 1934.

(d) Mississippi Power & Light Company, organized under the laws of Florida in 1927 and with its principal office and place of business at Jackson, Mississippi, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Mississippi and a gas utility business by means of natural gas distribution systems also located solely within
193 the State of Mississippi. Certain of the Company's transmission lines extend to the Mississippi-Louisiana boundary, to the Mississippi-Arkansas boundary and to the Mississippi-Tennessee boundary, and are used principally for the purpose of purchasing electric energy generated by other electric utility companies having properties outside the State of Mississippi. The Company purchases (in Mississippi) its natural gas requirements, for resale within the State of Mississippi, from United Gas Public Service Company, an associate natural gas company, from Southern Natural Gas Corporation, Memphis Natural Gas Company, and Interstate Natural Gas Company, and from two small local companies.

The Company, in the year 1934, generated with its own facilities and purchased from sources within the State of Mississippi approximately 8,000,000 kilowatt hours and purchased from associated electric utility companies approximately 140,000,000 kilowatt hours gen-

erated outside the State of Mississippi, all for sale to consumers in the State of Mississippi except as hereinafter referred to. The operating revenues from such electric energy sales were approximately $3,700,000, and the amount paid for energy purchased from sources outside the State of Mississippi in 1934 was approximately $720,000. The Company also transferred over its own lines through Mississippi to a point or points at a state boundary energy received at another point or points on a state boundary for redelivery to, or for the account of, other electric utility companies from which such energy was received. The amount of electric energy so transferred in the calendar year 1934 was approximately 70,000,000 kilowatt hours. In 1934 the Company sold at the Louisiana-Mississippi boundary to one municipality at wholesale for resale 150,000 kilowatt hours, the revenue from which was $5,600. Such municipality is no longer a customer of the Company.

The said Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants, and rendering transportation service, all in various communities within the State of Mississippi. The aggregate operating revenues of the Company, including the revenues from the electric,
194 gas, water, transportation and ice businesses done by the Company, were approximately $4,800,000 for the year 1934.

(e) New Orleans Public Service Inc., organized under the laws of Louisiana in 1926 and with its principal office and place of business at New Orleans, Louisiana, has since its organization conducted and still conducts an electric utility business by means of a generating plant and distribution system located solely within the State of Louisiana and a gas utility business by means of a manufactured gas plant and a distribution system supplying manufactured and/or natural gas, such plant and system also being located; and all of the gas, electric, and other operations of the Company being carried on, solely within the State of Louisiana. The Company purchases (in Louisiana) its natural gas requirements from a subsidiary of United Gas Public Service Company, an associate natural gas company.

The aggregate sales of electric energy by said Company in the year 1934 were approximately 277,000,000 kilowatt hours, and its electric operating revenues were approximately $7,500,000.

The Company also has carried on for a number of years and still carries on the business of supplying transportation service in the City of New Orleans, Louisiana, all of its facilities for rendering such service being located solely within the State of Louisiana. The aggregate operating revenues of said Company, including the revenues from the electric, gas, and transportation businesses done by said Company, were approximately $15,100,000 for the year 1934.

(f) Utah Power & Light Company, organized under the laws of Maine in 1912 and having its principal office and place of business at Salt Lake City, Utah, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the States

of Utah and Idaho and two small generating plants, a transmission line and two small distribution systems in the State of Wyoming. The Company owns certain transmissison lines which cross the Utah-Idaho boundary and a transmission line which crosses the Utah-Wyoming boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundaries
195 and are ultimately sold to customers of the Company in the states to which such energy has been transmitted.

The division of the Company's electric business among the three states of Utah, Idaho, and Wyoming in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Utah, 49%; Idaho, 50%; Wyoming, 1%; Electric energy generated and purchased: Utah, 32%; Idaho, 67%; Wyoming, 1%; Electric energy sales: Utah, 92%; Idaho, 7%; Wyoming, 1%; Electric revenue: Utah, 89%; Idaho, 9%; Wyoming, 2%; Customers: Utah, 87%; Idaho, 11%; Wyoming, 2%. The aggregate sales of electric energy by the Company in the calendar year 1934 were approximately 390,000,000 kilowatt hours in the State of Utah, with electric operating revenues of approximately $7,660,000; approximately 27,000,000 kilowatt hours in the State of Idaho, with electric operating revenues of approximately $750,000; and approximately 2,600,000 kilowatt hours in the State of Wyoming, with electric operating revenues of approximately $140,000. The Company in 1934 transferred approximately 296,000,000 kilowatt hours across the Utah-Idaho boundary and approximately 1,800,000 kilowatt hours across the Utah-Wyoming boundary. Its aggregate sales of electric energy at wholesale for resale at or across state boundaries in that year were approximately 231,000 kilowatt hours and its aggregate revenues therefrom were approximately $3,500, or less than one-tenth of 1% of the Company's aggregate electric operating revenues in that year. The Company also conducts a steam heating business in Salt Lake City, Utah. The Company's aggregate operating revenues in the year 1934, including its revenues from its electric and steam heating business were approximately $8,650,000.

Utah Power & Light Company owns all or substantially all of the capital stock of, and controls the operations of, (i) Utah Light and Traction Company, a Utah corporation which owns and operates a transportation system in Salt Lake City and vicinity and which also owns, but has leased to Utah Power & Light Company for ninety-nine years from January 1, 1915, certain electric generating plants, sub-transmission lines and distribution systems located wholly within the State of Utah, (ii) The Western Colorado Power
196 Company, a Colorado corporation which conducts an electric utility business by means of generating plants, transmission lines and distribution systems located wholly within the State of Colorado and (iii) Bountiful Light and Power Company, a Utah corporation which conducts an electric utility business by means of a distribution system in, and in the vicinity of, the City of Bountiful, Utah. The operating revenues of Utah Light and Traction Com-

pany from its transportation business in the year 1934 were approximately $1,000,000, while the aggregate sales of electric energy by said The Western Colorado Power Company in the year 1934 were approximately 17,000,000 kilowatt hours and its electric operating revenues were approximately $490,000. The aggregate sales of electric energy by said Bountiful Light and Power Company in the year 1934 were approximately 600,000 kilowatt hours and the electric operating revenues were approximately $38,000.

Electric Power & Light Corporation also owns all of the outstanding voting securities of Power Securities Corporation, which, in turn, owns all or substantially all of the common stock of Idaho Power Company, hereinafter described.

(g) Power Securities Corporation is a corporation organized and existing under the laws of New Hampshire which owns all of the common stock, except directors' qualifying shares, and 3,030 shares of the 7% Preferred Stock, of Idaho Power Company which is conducting, and for several years last past has conducted, an electric utility business in the States of Idaho and Oregon as hereinafter described:

(g) (1) Idaho Power Company, organized under the laws of Maine in 1915 and with its principal office and place of business at Boise, Idaho, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the States of Idaho and Oregon. The Company has certain transmission lines which cross the Idaho-Oregon boundary; the sales of electric energy made from such lines at wholesale for resale either at the state line or in Oregon aggregated approximately 2,800,000 kilowatt hours in the year 1934, with revenues therefrom of approximately $26,000 (less than 1% of its aggregate electric operating revenues in that
197 year). The aggregate sales of electric energy by the Company in Idaho and Oregon in 1934, including such sales at wholesale over said transmission lines, were approximately 20,000,000 kilowatt hours in the case of Oregon (all transmitted into Oregon from Idaho), with electric operating revenues of approximately $340,000, and approximately $340,000,000 kilowatt hours in the case of Idaho, with electric operating revenues of approximately $3,700,000. The Company delivers substantial quantities of electric energy (approximately 223,000,000 kilowatt hours in 1934, which are included in the above figure of 340,000,000 kilowatt hours) to Utah Power & Light Company in Idaho primarily for transmission to, and resale in, Utah.

Idaho Power Company owns all or substantially all of the capital stock of, and controls the operations of, Nevada Power Company, an Idaho corporation which conducts an electric utility business by means of a transmission line which crosses the Idaho-Nevada boundary. Nevada Power Company makes all of its sales of electric energy in the State of Nevada. The aggregate sales of electric en-

ergy by Nevada Power Company in 1934 were approximately 1,000,000 kilowatt hours (all purchased from Idaho Power Company in Idaho) and its electric operating revenues were approximately $17,000. Application has been made to the Federal Power Commission for permission to transfer all the properties of Nevada Power Company to Idaho Power Company.

Electric Power & Light Corporation also owns all or substantially all of the common stock of Dallas Railway & Terminal Company, a corporation organized under the laws of Texas, which has for many years conducted and still conducts a transportation service in the City of Dallas, Texas. The operating revenues of said Company in 1934 were approximately $2,300,000.

Electric Power & Light Corporation also owns 61.58% of the outstanding voting securities of defendant United Gas Corporation. A description of the subsidiary companies of said United Gas Corporation is given in Exhibit III.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are
198 typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of Electric Power & Light Corporation do not include certain minor subsidiaries holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of Electric Power & Light Corporation herein described to that Company and to one another.

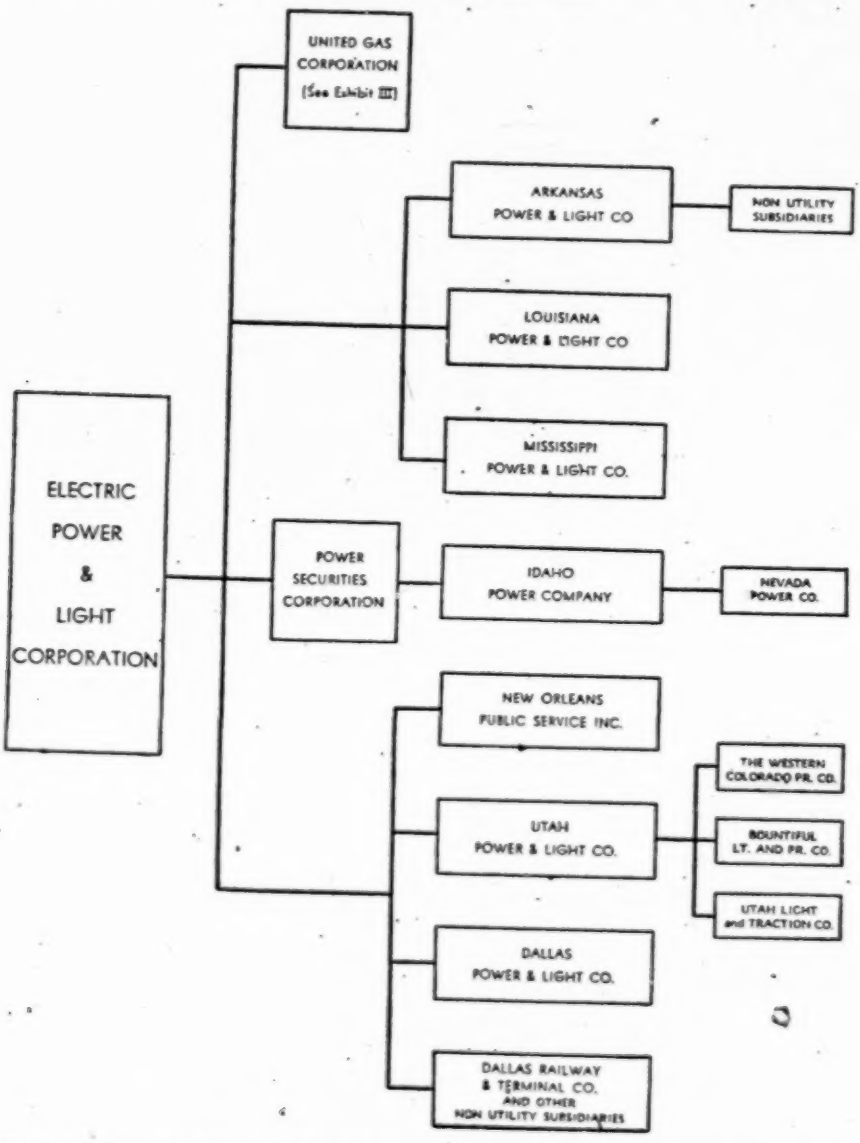
(Here follows 1 photo, folio 198½.)

Exhibit III to answer

Properties of, and Business Done by Subsidiaries of United Gas Corporation

United Gas Public Service Company, organized under the laws of Delaware in 1930 and with its principal office and place of business at Houston, Texas, has since January 1, 1931, carried on and still carries on the business of producing, purchasing, transporting, distributing, and selling natural gas by means of wells and other production facilities, pipe lines, and other transportation facilities and distribution systems in a territory which includes portions of the States of Texas, Louisiana, and Mississippi; the Company's pipe lines also extending into Alabama and Florida. In connection with the production of natural gas, and incident thereto, the Company

owns and operates gasoline extraction plants for the purpose of removing gasoline from natural gas, all of which are in Texas and Louisiana. Likewise, in connection with the production of natural gas, and incident thereto, said Company owns and operates oil-producing properties in Louisiana and certain of its subsidiaries own and operate oil-producing properties in Texas.



United Gas Public Service Company also owns all or substantially all of the voting securities of, and controls the operations of, Southern Gas Utilities, Inc., a Delaware corporation which owns natural gas production, transportation, and distribution properties in

199 the State of Texas; Northern Texas Utilities Company, a Delaware corporation which owns certain natural gas production, transportation and distribution properties, all within the State of Texas with the exception of one pipe line which crosses a corner of the State of Oklahoma; and Houston Gulf Gas Company, a Delaware corporation which owns certain natural gas production, transportation and distribution properties all within the State of Texas and which owns substantially all the outstanding voting securities of Houston Gas and Fuel Company, a Texas corporation which owns natural gas distribution properties in Houston, Texas.

The pipe lines of the Company and certain of its subsidiaries cross various boundaries of the states above indicated as well as the international boundary between the United States and the Republic of Mexico and substantial amounts of natural gas are transported across such boundaries, being commingled with gas produced in each of the states entered (and in the Republic of Mexico), except Oklahoma, Florida, and Alabama. The division of the aggregate natural gas business of the Company and its subsidiaries in the year 1934 may be indicated approximately as follows: Production and/or purchase: Texas, 75,400,000 thousand cubic feet; Louisiana, 118,600,000 thousand cubic feet; Mississippi, 7,500,000 thousand cubic feet; Mexico, 200,000 thousand cubic feet; Total, 201,700,000 thousand cubic feet; Sales at retail and wholesale: Texas, 76,400,000 thousand cubic feet; Louisiana, 100,200,000 thousand cubic feet; Mexico, 5,400,000 thousand cubic feet; Mississippi, 3,900,000 thousand cubic feet; Alabama, 550,000 thousand cubic feet; and Florida, 620,000 thousand cubic feet; Total, 187,070,000 thousand cubic feet; Operating revenues from gas sales: Texas, $14,400,000; Louisiana, $7,200,000; Mexico, $600,000; Mississippi, $510,000; Alabama, $180,000; and Florida, $110,000; Total, $23,000,000. In 1934, the Company transported across state boundaries for sale in a state other than that in which the gas was produced approximately 26,000,000 thousand cubic feet of natural gas. In that year it sold across state or international boundaries at wholesale for resale and at the pressure at which such gas was transported across such boundaries approxi-

mately 5,200,000 thousand cubic feet of natural gas. Its reve-

200 nues from such wholesale sales were approximately $310,000, or less than 1½% of its total revenues from the sale of natural gas in 1934. The Company also purchased in 1934 at pipe-line pressures approximately 13,500,000 thousand cubic feet of natural gas transported from Louisiana into Texas by a non-associate company. The revenues of United Gas Public Service Company and its said subsidiaries from sales of oil and natural gas gasoline in 1934 were approximately $1,490,000 and their total operating revenues from all sources in 1934 were approximately $24,700,000. There was a large increase in the oil revenues of such companies in 1935.

United Gas Public Service Company also owns directly 50% of the outstanding voting securities of Natural Gas Co., Inc., a Louisiana company which owns a natural gas distribution system in the State of Louisiana. United Gas Public Service Company also owns 24% of the outstanding voting securities of the Monroe Gas Company, which in turn owns the remaining 50% of the outstanding voting securities of Natural Gas Co., Inc.

United Gas Corporation also owns approximately 75% of the outstanding voting securities of Duval Texas Sulphur Company, a Texas corporation operating certain sulphur properties in the State of Texas, and all of the outstanding voting securities of Houston Gas Securities Company, a Delaware corporation which issued debentures in exchange for the bonds of Houston Gas and Fuel Company and which also owns certain debentures of United Gas Public Service Company.

United Gas Corporation also owns approximately 46% of the outstanding voting securities of Mississippi River Fuel Corporation, a Delaware corporation which is conducting and, for several years last past has conducted, a natural gas business consisting of the purchase of natural gas in the State of Louisiana and its transportation and sale at wholesale in the States of Louisiana, Arkansas, Missouri, and Illinois.

United Gas Corporation also owns, directly and indirectly, approximately 27% of the outstanding voting securities of El Paso Natural Gas Company, a Delaware Corporation, which for several years last past has carried on and still carries on, directly and through subsidiaries, the business of producing, purchasing, transporting, and distributing natural gas in the States of New Mexico, Texas, and Arizona and in the Republic of Mexico.

201 The statements of earnings, sales and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above-named direct and indirect subsidiaries of United Gas Corporation do not include certain companies engaged in sundry non-utility businesses, "name-saving" companies, or subsidiaries now in the process of dissolution, or other "shell" subsidiaries, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

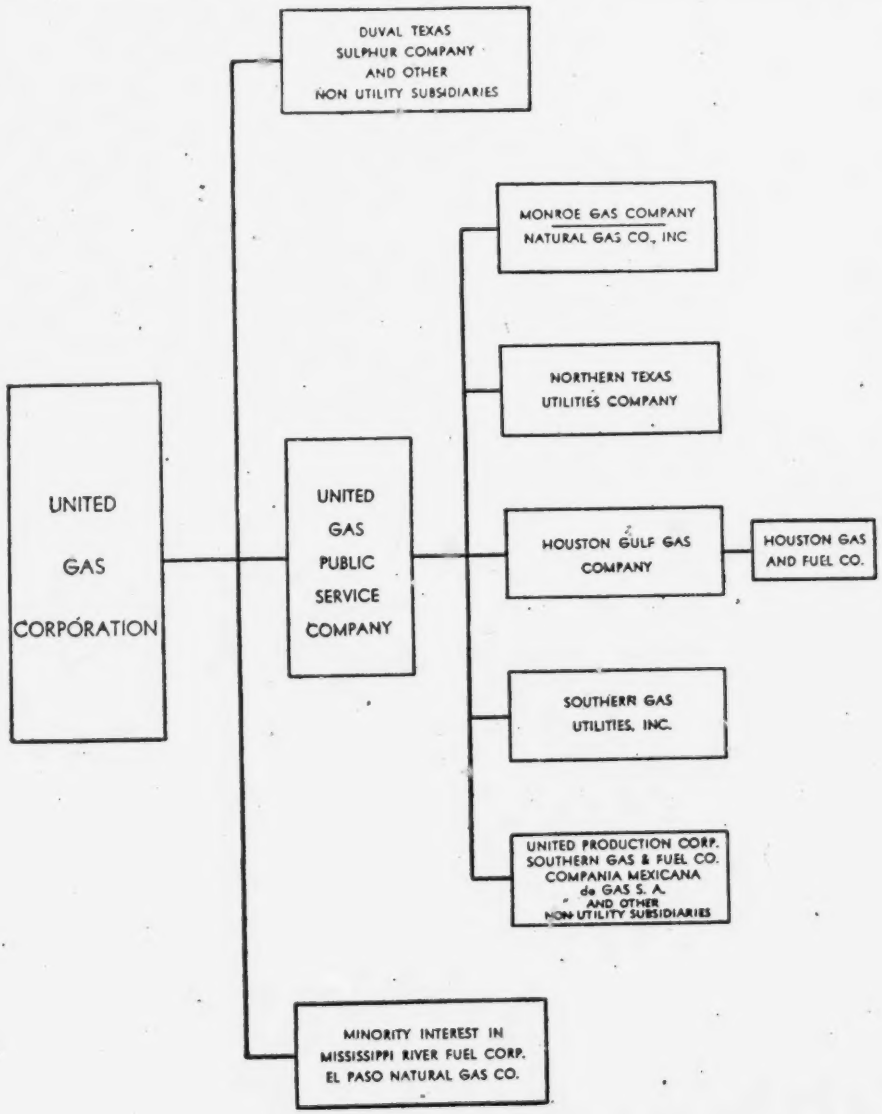
The corporate chart set forth on the next following page shows the relationships of the subsidiaries of United Gas Corporation to that Company and to one another.

(Here follows 1 photo, folio 201½.)

Exhibit IV to answer

Properties of, and Business Done by, Subsidiaries of National Power & Light Company

(a) Birmingham Electric Company, organized under the laws of Alabama in 1924 and having its principal office and place of business in Birmingham, Alabama, has for many years conducted and



still conducts an electric utility business by means of a distribution system located solely within the State of Alabama. Except during emergencies, the Company purchases in the State of Alabama

its entire requirements of electric energy from Alabama Power Company, a non-associate electric utility company. The aggregate sales of electric energy by Birmingham Electric Company for the year 1934 were approximately 190,000,000 kilowatt hours, and its electric operating revenues were approximately $4,000,000. The Company also conducts a steam heating service and a transportation service solely within the State of Alabama. The aggregate operating revenues of the Company, including the revenues from its electric utility business and its steam heating and transportation services, were approximately $5,900,000 for the year 1934.

(b) Carolina Power & Light Company, organized under the
202 laws of North Carolina in 1926 and having its principal office and place of business at Raleigh, North Carolina, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the states of North Carolina and South Carolina. Certain of the Company's transmission lines cross the North Carolina-South Carolina state boundary and substantial amounts of energy generated by the Company or obtained through purchase from, or interchange with, non-associate electric utility companies are transferred across said boundary over such lines for distribution to customers of the Company. Other transmission lines of the Company extend to the North Carolina-Tennessee boundary, where they are interconnected with transmission lines of Tennessee Public Service Company, an associate electric utility company and, through such company, with Appalachian Electric Power Company (a subsidiary company of American Gas and Electric Company); and also with other electric utility companies. Still other transmission lines of the Company extend to different points on the North Carolina-Virginia boundary, where they are interconnected with the transmission lines of said Appalachian Electric Power Company and with the transmission line of Roanoke River Power Company, an associate company. While the Company's principal business is the sale of electric energy at retail and at wholesale in the States of North Carolina and South Carolina, the Company sells a substantial amount of energy at wholesale to the said Tennessee Public Service Company, at the Tennessee boundary, and sells and interchanges substantial amounts of surplus energy, when available, with said Appalachian Electric Power Company at the Virginia boundary and also with the latter company and with other electric utility companies at the Tennessee boundary. Electric energy at times is delivered by the Company to the transmission line of said Roanoke River Power Company at one point on the North Carolina-Virginia boundary and is transmitted by the Roanoke River Power Company and redelivered to the Company at another point of interconnection on the North Carolina-Virginia boundary.

The division of the Company's electric business between the States of South Carolina and North Carolina, and the extent of its sale and interchanges at the North Carolina-Tennessee and the

203 North Carolina-Virginia state boundaries in 1934 are indicated by the following relations: Electric generating capacity installed and available under contract, South Carolina, 22%, North Carolina, 78%; Electric energy generated and purchased, South Carolina, 15%, North Carolina 65%, state boundaries 20%; Electric energy sales, South Carolina 8%, North Carolina 46%, state boundaries, 46%; Electric revenue, South Carolina, 18%, North Carolina 72%, state boundaries 10%; Electric customers, South Carolina, 22%, North Carolina 78%.

The aggregate sales of electric energy by the Company in the year 1934 were approximately 73,000,000 kilowatt hours in the State of South Carolina; approximately 427,000,000 kilowatt hours in the State of North Carolina; and approximately 431,000,000 kilowatt hours (largely surplus hydro-electric energy) in North Carolina-Tennessee and North Carolina-Virginia deliveries. The Company's aggregate deliveries of electric energy in 1934 from interstate transmission lines at wholesale for resale, at or across state boundaries or pursuant to interchange or other contracts under which deliveries are made in states other than North Carolina or South Carolina, were approximately 458,000,000 kilowatt hours (including large amounts of surplus and exchanged power and including the sales of 431,000,000 kilowatt hours referred to above) and the aggregate revenues therefrom were approximately $885,000 or approximately 9.5% of the Company's aggregate electric operating revenues of approximately $9,300,000 in 1934. The Company also transferred for its own account across the North Carolina-South Carolina boundary approximately 109,000,000 kilowatt hours, including approximately 9,000,000 kilowatt hours which are a part of the above 458,000,000 kilowatt hours delivered outside of North Carolina and South Carolina. The Company also renders transportation service in two cities in North Carolina and owns substantially all the capital stock of a non-utility subsidiary company which owns certain real estate and other property. The Company's aggregate operating revenues in the year 1934, including its revenues from its electric business and its transportation service, were approximately $9,600,000.

(c) Holston River Electric Company, organized under the laws of Tennessee in 1924 and having its principal office and place of business in Knoxville, Tennessee, has throughout its history
204 conducted, and still conducts, an electric utility business by means of transmission lines and distribution systems located solely within the State of Tennessee. The Company purchases its entire requirements of electric energy in Tennessee from Tennessee Public Service Company, an associate electric utility company, but not at an interstate transmission voltage. The aggregate sales of electric energy by the Company for the year 1934 were approximately 1,200,000 kilowatt hours and its electric operating revenues for said year were approximately $44,000.

(d) Houston Lighting & Power Company, organized under the laws of Texas in 1906, and having its principal office and place of business at Houston, Texas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company for the year 1934 were approximately 420,000,000 kilowatt hours, and its electric operating revenues therefrom were approximately $8,400,000.

(e) Memphis Power & Light Company, organized under the laws of New Jersey in 1922 with its principal office and place of business at Memphis, Tennessee, has for many years conducted and still conducts an electric utility business by means of a generating plant, transmission lines and distribution systems located solely within the State of Tennessee and a gas utility business by means of a manufactured gas plant and a system for the distribution of manufactured and/or natural gas also located solely within the State of Tennessee. The Company's transmission lines extend to the Tennessee-Arkansas boundary and are there used for the purpose of supplying stand-by service for a small community served by another electric utility company in Arkansas and for interchanging electric energy by and with other electric utility companies having properties outside the State of Tennessee. Said lines also extend to the Tennessee-Mississippi boundary, where the Company sells electric energy to another electric utility company.

The Company, in the year 1934, sold to consumers in the State of Tennessee approximately 162,000,000 kilowatt hours, and the revenues therefrom were approximately $4,200,000. The aggre-
205 gate sales of electric energy over the Company's transmission lines extending to Tennessee-Arkansas and Tennessee-Mississippi boundaries were approximately 990,000 kilowatt hours in the calendar year 1934 and the revenues therefrom were approximately $15,000. The Company has a contract entitling it to receive standby service over said line extending to the Tennessee-Arkansas boundary, but in the year 1934 did not actually purchase any energy under such contract. The Company also transferred over its own lines in Tennessee energy received by it at a state boundary for delivery at another point or points at a state boundary for the account of the company from which such energy was received. The amount of electric energy so transferred in the calendar year 1934 was approximately 22,000,000 kilowatt hours.

The aggregate operating revenues of the Company, including the revenues from the gas and electric businesses done by the Company, were approximately $6,400,000 for the year 1934.

(f) Roanoke River Power Company, organized under the laws of Virginia in 1925 and having its principal office and place of business at Richmond, Virginia, owns an undeveloped hydro-electric site

and lands adjacent thereto located in the States of Virginia and North Carolina. The Company also owns an electric transmission line located solely in Virginia and used for the purpose of transferring energy through Virginia between two points on the Virginia-North Carolina boundary for the account of Carolina Power & Light Company, an associate electric utility company, the aggregate amount of electric energy so transferred during the year 1934 having been approximately 78,000,000 kilowatt hours. Roanoke River Power Company neither buys nor sells electric energy and has no other electric business than the ownership and operation of said transmission line.

(g) Tennessee Public Service Company, organized under the laws of Maine in 1925 and having its principal office and place of business at Knoxville, Tennessee, has throughout its history conducted, and still conducts, an electric utility business by means of generating stations, transmission lines and distribution systems located solely within the State of Tennessee. Certain of said transmission lines extend to the Tennessee-North Carolina boundary,
206 where they interconnect with transission lines owned and maintained by the Carolina Power & Light Company, an associate electric utility company. The Company purchases substantially all of its requirements of electric energy from Carolina Power & Light Company by means of such interconnections. All of the electric energy so purchased and generated by the Company is distributed at retail in Tennessee by the Company and by Holston River Electric Company, an associate electric utility company which purchases from it a small amount of electric energy. From time to time, the Company transmits over its own lines large amounts of electric energy between such points of interconnection with Carolina Power & Light Company and points of interconnection with the lines of other electric utility companies in Tennessee. The aggregate sales of electric energy by the Company for the year 1934 were approximately 85,000,000 kilowatt hours, and its electric operating revenues were approximately $2,200,000. The Company also conducts a transportation service solely within the State of Tennessee. The aggregate operating revenues of the Company, including the revenues from its electric utility service and its transportation service, were approximately $2,800,000 for the year 1934.

(h) West Tennessee Power & Light Company, organized under the laws of the State of Florida in 1928 and having its principal office and place of business in Jackson, Tennessee, has for many years conducted, and still conducts, an electric utility business by means of generating plants, transmission lines and distribution systems, and a natural gas utility business by means of gas distribution systems and a stand-by gas plant, all of its property being located, and all of its operations conducted, solely within the State of Tennessee. The Company purchases in Tennessee approximately 65% of its electric energy from Memphis Power & Light Company,

an associate electric utility company. The aggregate sales of electric energy by the Company for the year 1934 were approximately 13,600,000 kilowatt hours and its electric operating revenues were approximately $530,000. The Company also conducts a transportation service and renders water service and ice service solely within the State of Tennessee. The aggregate operating revenues of the Company, including the revenues from its electric and gas
207 utility service and water transportation and ice businesses, were approximately $760,000 for the year 1934.

National Power & Light Company also owns 129,720 shares of the $6 Preferred Stock and 2,918,082 shares of the Common Stock (constituting more than 99 per centum of the outstanding voting securities thereof) of:

(i) Lehigh Power Securities Corporation, a corporation organized and existing under the laws of Delaware which owns directly or indirectly all or substantially all of the common stock of the following electric and gas utility companies which are conducting, and for several years last past have conducted, an electric or gas utility business in Pennsylvania as hereinafter described.

(i) (1) Lehigh Valley Transit Company, organized under the laws of the State of Pennsylvania in 1905 and with its principal office and place of business in Allentown, Pennsylvania, has for many years rendered and still renders transportation service in various communities in the State of Pennsylvania, such transportation service constituting its principal business. This Company also owns a steam-electric generating station which has been operated from time to time as stand-by equipment, as well as certain electric distribution lines, all located solely within the State of Pennsylvania, over which it distributes electric energy for its own uses and for delivery to Pennsylvania Power & Light Company, an associate electric utility company.

Lehigh Valley Transit Company also owns all or substantially all of the capital stock of Easton Consolidated Electric Company, a New Jersey corporation, which in turn owns, among other securities, all the capital stock of The Edison Illuminating Company of Easton, which in 1900 leased its electric distribution systems in and adjacent to the City of Easton, Pennsylvania, to the Metropolitan Edison Company under an agreement terminating in 1999.

Lehigh Valley Transit Company also owns all or substantially all the capital stock of certain subsidiary companies owning and operating motor buses and amusement park, toll bridge, and other properties located and operated solely in Pennsylvania, except for certain incidental bus service across the Pennsylvania-New Jersey boundary (the aggregate revenues from which were approximately $74,000 in 1934), and one tract of land located in New Jersey. The aggregate operating revenues of Lehigh Valley Transit
208 Company and all of its subsidiary companies in the year 1934 were approximately $2,400,000.

On October 30, 1935, Lehigh Valley Transit Company and Easton Transit Company, one of its subsidiaries owning facilities for transportation service, filed petitions in a proceeding in the United States District Court for the Eastern District of Pennsylvania for reorganization under Section 77B of the Bankruptcy Act as amended for the purpose of extending certain maturing obligations. Said proceedings are still pending in said Court and neither of said companies has received a final discharge.

(i) (2) Pennsylvania Power & Light Company, organized under the laws of Pennsylvania in 1920 and with its principal office and place of business at Allentown, Pennsylvania, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within Pennsylvania and a gas utility business by means of manufactured gas plants and systems for the transmission and distribution of manufactured and/or natural gas, such plants and systems being located solely within Pennsylvania. One of the Company's transmission lines extends to the Pennsylvania-New Jersey boundary and is used for the purpose of interchanging electric energy with a non-associate electric utility company having properties in the State of New Jersey.

The aggregate deliveries and receipts of electric energy between the Company and said non-associate electric utility company having properties in the State of New Jersey were, respectively, approximatly 26,000,000 kilowatt hours and 18,000,000 kilowatt hours in the year 1934. The Company also purchased in the year 1934 at the Pennsylvania-New York boundary, for an isolated distribution system in Pennsylvania approximately 13,000 kilowatt hours, the aggregate revenues from the sale of which in that year were $540. The Company made no other interstate purchases or sales. In 1935 the Company extended its lines to this particular community and the state boundary purchase was discontinued. The aggregate sales of electric energy by the Company in Pennsylvania were approximately 1,300,000,000 kilowatt hours in the year 1934 and its aggregate electric operating revenues were approximately $31,600,000.

209 The Company has also carried on for a number of years, and still carries on, the business of rendering steam heating service in two communities in Pennsylvania. Its aggregate operating revenues, including the revenues from its electric, gas and steam heating businesses, were approximately $34,000,000 for the year 1934.

Pennsylvania Power & Light Company also owns all, or substantially all, of the outstanding voting securities of and controls the operations of, the following companies, all the properties of which are located, and all the operations of which are conducted, solely within Pennsylvania: (1) Lehighton Electric Light and Power Company, a Pennsylvania corporation which carries on an electric utility business by means of a distribution system; (2) North Branch Development Company, a Pennsylvania corporation which carries on

a natural gas production business by means of wells and other production facilities and (3) Susquehanna Gas Company, a Pennsylvania corporation which owns certain natural gas transmission lines and which transmits natural gas from North Branch Development Company to Pennsylvania Power & Light Company. Pennsylvania Power & Light Company also owns 50 per centum of the capital stock of Stanton Operating Company, which is employed by Pennsylvania Power & Light Company and The Scranton Electric Company to furnish the labor and materials required in the operation of an electric generating plant near Pittston, Pennsylvania, approximately one-half of which is owned by Pennsylvania Power & Light Company itself. Pennsylvania Power & Light Company likewise owns directly and indirectly approximately 27 per centum of the capital stock of Conestoga Transmission Company, a Pennsylvania corporation which owns a transmission line, located solely within Pennsylvania, held and operated by Pennsylvania Power & Light Company under the provisions of a 999-year lease.

Pennsylvania Power & Light Company also owns all or substantially all of the capital stock of certain subsidiary companies rendering water and other services, holding land and carrying on certain other businesses solely in Pennsylvania, except for certain relatively small parcels of land held in New Jersey adjacent to Pennsylvania.

210 National Power & Light Company also owns all or substantially all of the stock of South Texas Utilities Company, a Texas company, which conducts a water and ice service solely within the State of Texas. The operating revenues of said Company in 1934 were approximately $86,000.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of National Power & Light Company do not include certain minor companies holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

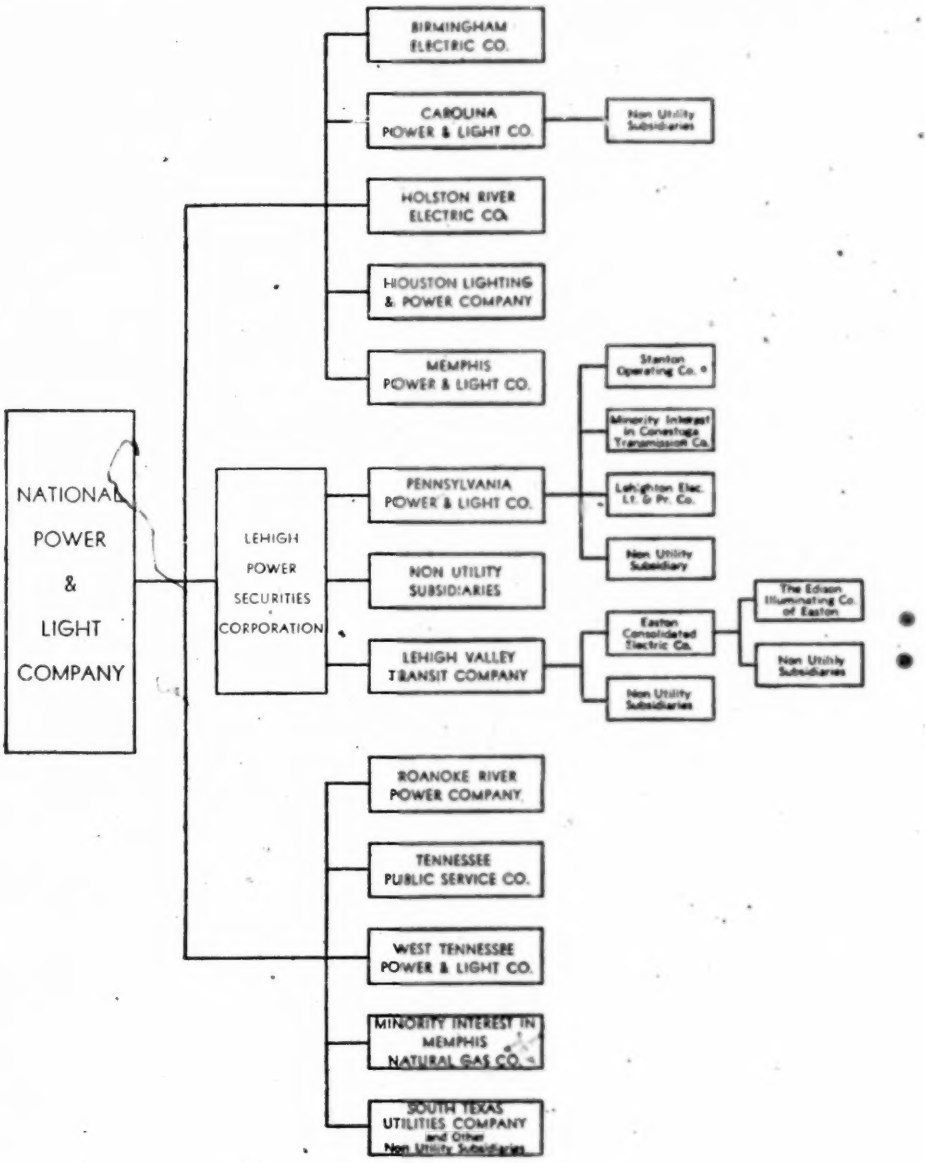
The corporate chart set forth on the next following page shows the relationships of the subsidiaries of National Power & Light Company herein described to that Company and to one another.

(Here follows 1 photo, folio 210½.)

Exhibit V to answer

Properties of, and Business Done by, Subsidiaries of American Gas and Electric Company

(a) Atlantic City Electric Company, organized under the laws of New Jersey in 1924 with its principal office and place of business at Atlantic City, New Jersey, has since its organization conducted and still conducts an electric utility business by means of generating



* 50% OWNED BY PENNSYLVANIA POWER & LIGHT COMPANY; REMAINING 50% OWNED BY THE SCRANTON ELECTRIC COMPANY

plants, transmission lines and distribution systems located solely within the State of New Jersey. The aggregate sales of electric energy by the Company in the year 1934, were approximately 165,000,000 kilowatt hours, and the operating revenues therefrom were approximately $6,450,000. The Company also has carried on for a number of years, and still carries on, the business of furnishing
211 heating service in the city of Atlantic City, New Jersey. The aggregate operating revenues of the Company, including the revenues from its electric business and heating service, were approximately $6,550,000 for the year 1934.

The Company owns 50 per centum of the capital stock of the Deepwater Operating Company and 50 per centum of the capital stock of South Pennsgrove Realty Company. The Deepwater Operating Company owns no utility assets and is engaged solely in the operation of the electric generating plant at Deepwater, near Pennsgrove, New Jersey, approximately one-half of which is owned by the Atlantic City Electric Company. Deepwater Operating Company sells steam at the wall of said electric generating plant and electric energy at the plant substation to one industrial plant for use wholly within the State of New Jersey and furnishes electric energy to the Atlantic City Electric Company and to Deepwater Light and Power Company, a non-associate electric utility company which owns the other half of the said electric generating plant. The South Pennsgrove Realty Company holds presently idle land adjacent to the Deepwater generating plant.

(b) Indiana General Service Company, organized under the laws of Indiana in 1913 and with its registered office at Alexandria, Indiana and its principal place of business at Marion, Indiana, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located solely within the state of Indiana. The Company, in the year 1934, generated with its own facilities, and purchased from sources within the state of Indiana, approximately 146,000,000 kilowatt hours of electric energy, all for sale to consumers in the state of Indiana, and the operating revenues therefrom were approximately $2,900,000. The Company also has carried on for a number of years, and still carries on, the business of furnishing steam or hot water heating service in various communities within the state of Indiana. The aggregate operating revenues of the Company, including the revenues from heating service, were approximately $3,075,000, for the year 1934.

(c) Indiana & Michigan Electric Company, organized under the laws of Indiana in 1925 and with its principal office and place of business at South Bend, Indiana, has since its organization
212 conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems located within the States of Indiana and Michigan. The Company owns certain transmission lines which cross the Indiana-

Michigan boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundary and are ultimately sold to retail customers of the Company or at wholesale. The Company also has certain transmission lines extending to the Indiana-Ohio boundary, which are used for the purpose of exchanging electric energy with and receiving electric energy from an associate electric utility company having properties outside the State of Indiana.

The division of the Company's electric business between the States of Indiana and Michigan in 1934 is indicated by the following relations: Electric Generating Capacity: Indiana, 90%; Michigan, 10%. Electric Energy Generated and Purchased: Indiana, 19%; Michigan, 7%; at state boundaries from other states, 74%. Electric Energy Sales: Indiana, 86%; Michigan, 12%; at state boundaries 2%. Electric Revenue: Indiana, 77%; Michigan, 22%; at state boundaries, 1%. Customers: Indiana, 70%; Michigan, 30% except two customers at state boundaries. The aggregate sales of electric energy by the Company in the year 1934 were approximately 389,000,000 kilowatt-hours in the State of Indiana, with revenues therefrom of approximately $4,900 000; approximately 57,000,000 kilowatt-hours in the State of Michigan, with revenues therefrom of approximately $1,450,000; and approximately 8,242,000 kilowatt-hours at state boundaries, with revenues therefrom of approximately $60,000. The Company in 1934 transferred to or across state boundaries for its own account or for sale at wholesale approximately 60,000,000 kilowatt-hours. It sold at or across state boundaries at wholesale for resale 8,242,000 kilowatt-hours (pratically all of which was delivered to non-associate companies), or less than 2% of the total number of kilowatt-hours which it sold in that year.

(d) The Ohio Power Company, organized under the laws of Ohio in 1907, with its principal office and place of business at Canton, Ohio, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems in Ohio and one generating station
213 located on the West Virginia side of the Ohio River, which station is connected to the Company's transmission lines in Ohio. Substantial amounts of electric energy are transmitted by the Company from its West Virginia generating station, for itself and for account of others, across the Ohio-West Virginia boundary and are ultimately delivered to others or sold to retail or wholesale customers of the Company. The Company also has certain transmission lines extending to the Ohio-Indiana boundary, to the Ohio-Kentucky boundary, and to the Ohio-West Virginia boundary, which are used for the purpose of selling electric energy to, exchanging electric energy with and receiving electric energy from, associate electric utility companies having properties outside the State of Ohio.

The division of the Company's electric business between the states of Ohio and West Virginia in 1934 is indicated by the following relations: Electric Generating Capacity, Ohio, 76%; West Virginia,

24%. Electric Energy Generated and Purchased, Ohio, 69%; West Virginia, 23%; at state boundaries, 8%. Electric Energy Sales, Ohio, 49%; West Virginia, 5%; in West Virginia for customers in Ohio, 19%; at state boundaries, 27%. Electric Revenue, Ohio, 84%; West Virginia, 5%; in West Virginia for customers in Ohio, 7%; at state boundaries, 4%. Customers, Ohio, approximately 215,000 customers; West Virginia or at state boundaries, 5 customers. The aggregate sales of electric energy by the Company in the year 1934 were approximately 887,000,000 kilowatt-hours in the State of Ohio, with revenues therefrom of approximately $16,400,000; approximately 98,000,000 kilowatt-hours in the State of West Virginia, with revenues therefrom of approximately $800,000; approximately 340,000,000 kilowatt-hours in West Virginia for customers in Ohio with revenues therefrom of approximately $1,460,000; and approximately 490,000,000 kilowatt-hours at state boundaries with revenues therefrom of approximately $890,000. The Company in 1934 transferred to or across state boundaries for its own account, for the account of others or for sale to others approximately 838,000,000 kilowatt hours. Of this amount it sold at or across state lines at wholesale for resale approximately 490,000,000 kilowatt hours, all of which was delivered to associate companies, and transmitted across state boundaries for the account of others approximately 340,000,000 kilowatt hours. The balance of the electric energy transmitted by the Company to or across state boundaries was sold to retail customers of the Company. The Company also conducts a steam heating business in several communities and a water service in one community in the State of Ohio. The aggregate operating revenues of the Company, including revenues from its electric business, and from its heating and water service, were approximately $19,700,000 for the year 1934.

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The Company owns 50 per centum of the capital stock of Windsor Power House Coal Company and 50 per centum of the capital stock of Beech Bottom Power Company, Inc. Beech Bottom Power Company, Inc., owns no utility assets and is engaged solely in the operation of an electric generating plant at Power, West Virginia, approximately one-half of which is owned by The Ohio Power Company. Beech Bottom Power Company, Inc., furnishes electric energy to The Ohio Power Company at the said electric generating plant. Such electric energy is either delivered to others at the said electric generating plant, for distribution or use in West Virginia and in Ohio, or transmitted by The Ohio Power Company from West Virginia into Ohio for distribution. Beech Bottom Power Company, Inc., also furnishes energy to the West Penn Power Company, a non-associate electric utility company which owns the other half of said electric generating plant. The Windsor Power House Coal Company owns all the capital stock of Windsor Coal Company. The Windsor Power House Coal Company and the Windsor Coal Company own and/or operate a "captive" coal mine at Power, West Virginia, which furnishes fuel to the adjacent electric generating plant.

(e) The Scranton Electric Company, organized under the laws of Pennsylvania in 1928 with its principal office and place of business at Scranton, Pennsylvania, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Pennsylvania. The aggregate sales of electric energy by the Company for the year 1934 were approximately 227,000,000 kilowatt-hours, and the operating revenues therefrom were approximately $5,750,000. The Company also has carried on for a number of years and still carries on the business of furnishing
215 steam heating service in the city of Scranton, Pennsylvania.

The aggregate operating revenues of the Company, including revenues from its electric business and heating service, were approximately $6,175,000 for the year 1934.

The Company owns fifty per cent. of the capital stock of Stanton Operating Company, which company owns no utility assets and is employed by The Scranton Electric Company and Pennsylvania Power & Light Company to furnish the labor and materials required in the operation of an electric generating plant near Pittston, Pennsylvania, approximately one-half of which is owned by The Scranton Electric Company. Stanton Operating Company furnishes electric energy to The Scranton Electric Company and to the Pennsylvania Power & Light Company, an electric utility company, which owns the other half of said electric generating plant.

(f) Wheeling Electric Company, organized under the laws of West Virginia in 1905 with its principal office and place of business at Wheeling, West Virginia, has since its organization conducted and still conducts an electric utility business by means of a generating plant, transmission lines, and distribution systems located within the States of West Virginia and Ohio. The Company owns certain transmission lines in West Virginia which extend to the West Virginia-Ohio boundary, and owns distribution lines which cross the West Virginia-Ohio boundary. The aggregate sales of electric energy by the Company in West Virginia and Ohio in 1934 were approximately 73,000,000 kilowatt-hours in the case of West Virginia, with operating revenues therefrom of approximately $2,000,000, and approximately 8,000,000 kilowatt-hours in the case of Ohio, with operating revenues therefrom of approximately $300,000. All of the electric energy sold by the Company in Ohio was generated by the Company or by The Ohio Power Company in West Virginia and transmitted to Ohio by the Company or by The Ohio Power Company for the account of the Company.

(g) Appalachian Electric Power Company, organized under the laws of Virginia in 1926 and having its principal office and place of business at Roanoke, Virginia, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems
216 located within the states of Virginia and West Virginia and, since the end of 1934, a short length of transmission line in

the state of Tennessee. The Company owns certain transmission lines which cross the Virginia-West Virginia boundary and another transmission line which crosses the Virginia-Tennessee boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundaries and are ultimately sold to retail customers of the Company or at wholesale.

The Company also has transmission lines extending to the West Virginia-Ohio boundary, to the West Virginia-Kentucky boundary, to the Virginia-Kentucky boundary, and to the Virginia-North Carolina boundary, which are used for the purpose of selling electric energy to, exchanging electric energy with, and receiving electric energy from associate electric utility companies and Carolina Power & Light Company, an electric utility company having properties outside the states of Virginia and West Virginia.

The division of the Company's electric business between the states of Virginia and West Virginia in 1934 is indicated by the following relations: Electric Generating Capacity: West Virginia, 61%; Virginia, 39%; Electric Energy Generated and Purchased: West Virginia, 45%; Virginia, 26-; at state boundaries, 29%; Electric Energy Sales: West Virginia, 58%; Virginia, 19%; at state boundaries, 23%; Electric Revenue: West Virginia, 68%; Virginia, 25%; at state boundaries, 7%; Customers: West Virginia, 62%; Virginia, 38%, except two customers at state boundaries.

The aggregate sales of electric energy by the Company in the calendar year 1934 were approximately 810,000,000 kilowatt hours in the State of West Virginia, with revenues therefrom of approximately $12,100,000; approximately 250,000,000 kilowatt hours in the state of Virginia, with revenues therefrom of approximately $4,400,000; and approximately 334,000,000 kilowatt hours at state boundaries, with revenues therefrom of approximately $1,100,000. The Company transferred to or across state boundaries for its own account or for sale to others in 1934 approximately 972,000,000 kilowatt hours. Of this amount it sold at or across state lines at wholesale for resale approximately 334,000,000 kilowatt hours, all of
217 which was delivered to associate companies. Of this amount, it also delivered to Carolina Power & Light Company itself at the Virginia-North Carolina boundary or to Tennessee Public Service Company at Kingsport, Tennessee, for the account of said Carolina Power & Light Company, approximately 16,000,000 kilowatt hours of electric energy. In 1935 the Company made sales of electric energy within the State of Tennessee, which, in 1934, were made as, and are shown herein as, sales at a state boundary, and in that year amounted to approximately 30,000,000 kilowatt hours, with revenues therefrom of approximately $75,000.

Appalachian Electric Power Company owns all of the capital stock and all of the bonds of the following electric utility companies which are conducting, and for several years last past have conducted eelctric utility businesses in the states hereinafter mentioned as hereinafter described:

(g) (1) Kentucky and West Virginia Power Company, Inc., organized under the laws of Kentucky in 1919 and with its principal office and place of business at Ashland, Kentucky, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Kentucky. Certain of the Company's transmission lines extend to the Kentucky-Virginia boundary, to the Kentucky-West Virginia boundary and to the Kentucky-Ohio boundary, and are used for the purpose of exchanging electric energy with and receiving electric energy from associate electric utility companies having properties outside the State of Kentucky.

The Company, in the year 1934, generated with its own facilities approximately 38,000,000 kilowatt-hours and purchased approximately 138,000,000 kilowatt-hours generated outside the State of Kentucky, all for sale to consumers in the State of Kentucky. The operating revenues from such electric energy sales were approximately $2,700,000, and the amount paid for energy purchased from sources outside the State of Kentucky, in 1934, was approximately $870,000. The Company in 1934 delivered approximately 6,000,000 kilowatt hours of electric energy to associate companies for resale in states other than Kentucky.

(g) (2) Kingsport Utilities, Incorporated, organized under
218 the laws of Virginia in 1917 and with its principal office and place of business at Kingsport, Tennessee, has since its organization conducted and still conducts an electric utility business by means of a generating plant, transmission lines and distribution systems located solely within the State of Tennessee. One of the Company's distribution lines extends to the Tennessee-Virginia boundary, at which point electric energy is sold to an associate electric utility company having properties outside the State of Tennessee. In the year 1934 such sales aggregated approximately 2,000 kilowatt-hours, with revenues therefrom of less than $100.

The Company in the year 1934 purchased approximately 31,500,000 kilowatt-hours generated outside of the State of Tennessee, all (except a negligible amount to Virginia) for sale to consumers in the State of Tennessee, and the operating revenues therefrom were approximately $430,000, and the net amount paid for energy purchased from sources outside the State of Tennessee in 1934 was approximately $75,000.

Appalachian Electric Power Company also owns all of the capital stock of the West Virginia Power Company, a corporation organized under the laws of West Virginia in 1912 which owns certain real estate and rights and has made sundry investigations, etc. in connection with proposed hydro-electric developments on the Kanawha River in the State of West Virginia, and all the capital stock of the Radford Limestone Company, organized under the laws of Virginia in 1930, which operates on a commercial basis a stone quarry

near Radford, Virginia, owned by the Appalachian Electric Power Company as part of a proposed hydro-electric development.

American Gas and Electric Company also owns all of the outstanding stock of the following companies:

Twin Branch Railroad Company, a corporation organized under the laws of Indiana in 1925 which has for many years conducted and still conducts a railroad service in the vicinity of Michawaka, Indiana. The operating revenues of said Company, in 1934, were approximately $12,000.

St. Joseph Heating Company, a corporation organized under the laws of Indiana in 1912, which for many years conducted and still conducts a steam heating service in the city of South Bend, Indiana. The operating revenues of said Company, in 1934, were approximately $100,000.

219 Southern Ohio Public Service Company, a corporation organized under the laws of Ohio in 1925, which for many years has owned and now owns an electric generating plant in the city of Zanesville, Ohio, the entire output of which is sold at wholesale in Ohio to The Ohio Power Company, an associate company. The gross operating revenue of said Company in the year 1934 was less than $12,000.

The Kanawha Valley Power Company, a corporation organized under the laws of West Virginia in 1931, which operates electric generating plants in West Virginia and sells the entire output of electric energy from such plants to Appalachian Electric Power Company, an associate company.

American Gas and Electric Company also owns fifty per cent of the stock of the West Pittston-Exeter Railroad Company, a corporation organized under the laws of Pennsylvania in 1925, which has for many years conducted and still conducts a railroad service in the vicinity of Pittston, Pennsylvania. The operating revenues of said Company, in 1934, were approximately $64,000.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of American Gas and Electric Company do not include certain minor subsidiary companies holding land or conducting other businesses, or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of mortgage provisions, etc.

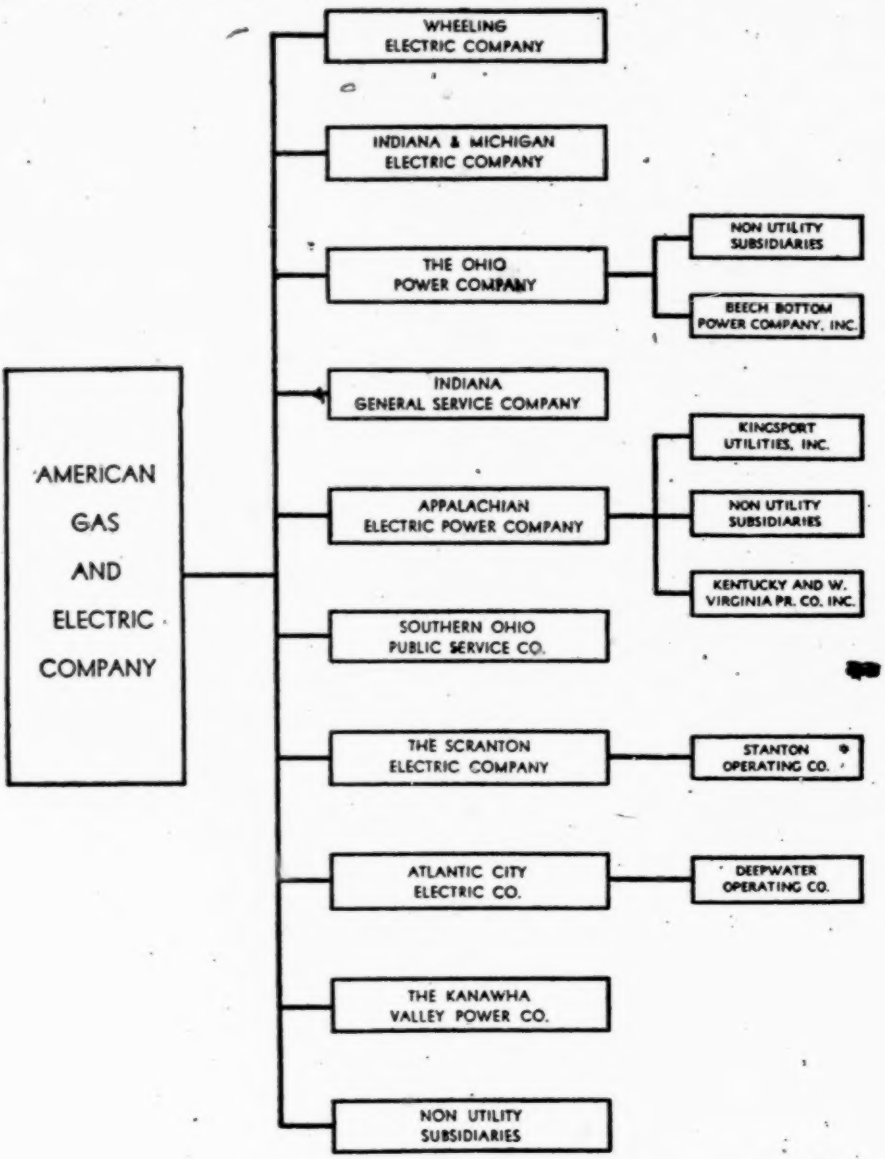
The corporate chart set forth on the next following page shows the relationships of the subsidiary companies of American Gas and Electric Company herein described to that Company and to one another.

(Here follows 1 photo., folio 219½.)

220 *Exhibit VI to answer*

Statement of Capitalization of Holding Company Defendants (Other Than Defendant Electric Bond and Share Company) and the Voting Stock Ownership of Defendant Bond and Share in Such Companies as of November 30, 1935

Defendant American Power & Light Company has outstanding $43,420,500 principal amount of Gold Debenture Bonds, American 6% Series, due March 1, 2016; $4,159,000 principal amount of the



6% Gold Debenture Bonds, Series A, due March 1, 2022, of Southwestern Power & Light Company assumed by the American Company; 793,581-2/10ths shares of Preferred Stock ($6), (including 37-2/10ths shares represented by outstanding scrip), 978,444 shares of $5 Preferred Stock, and 3,008,511-27/50ths shares of Common Stock (including 3,101-27/50ths shares represented by outstanding scrip). Each share of stock of all classes has equal voting power. Defendant Bond and Share owns 51,840 shares of the $5 Preferred Stock and 937,213 shares of the common stock of the defendant American Company, constituting 20.70 per centum of the outstanding voting securities of said company.

Defendant Electric Power & Light Corporation has outstanding $31,000,000 principal amount of Gold Debentures, 5% Series, due 2030; 514,174 shares of $7 Preferred Stock, 255,430⅔ shares of $6 Preferred Stock (including 4⅔ shares represented by outstanding scrip); 83,539 shares of Second Preferred Stock, Series A, ($7); 3,418,961½ shares of Common Stock and Option Warrants to purchase 569,654 shares of Common Stock. Each share of $7 Preferred Stock $6 Preferred Stock and Common Stock has equal voting power. Defendant Bond and Share owns 485 shares of the $7 Preferred Stock and 1,976,638 shares of the Common Stock of the defendant Electric Company, constituting 47.20 per centum of the outstanding voting securities of said Company. In addition, defendant Bond and Share owns 13,905 shares of said Second Preferred Stock, Series A, ($7) and 393,408 of said Option Warrants of said Electric Company.

Defendant Power Securities Corporation has outstanding $4,524,-
100 principal amount of Collateral Trust Gold Bonds, Ameri-
221 can 6% Series due June 1, 1949; 58,054 shares of Second Pre-
ferred ($6) Stock and 150,000 shares of Common Stock. Each share of common stock and second preferred stock has equal voting power. Defendant Bond and Share owns none of the outstanding voting securities of said Power Securities Corporation, but defendant Electric Company owns all of said outstanding voting securities. In addition, defendant Electric Company owns $1,874,900 of the above mentioned Collateral Trust Gold Bonds.

Defendant United Gas Corporation has outstanding $21,250,000 principal amount of 6% Notes due July 20, 1936; a 6% Demand Note in the principal amount of $25,925,000, a 6% Note due November 30, 1938, in principal amount of $3,000,000; 449,822 shares of $7 Preferred Stock; 884,680 shares of $7 Second Preferred Stock, 7,818,959 shares of Common Stock and Option and Stock Purchase Warrants to purchase 4,867,982 shares of Common Stock. Each share of $7 Second Preferred Stock is entitled to three votes and each share of common stock is entitled to one vote. Defendant Bond and Share owns said 6% Demand Note for $25,925,000, said 6% Note for $3,000,000; 17,310 shares of the $7 Preferred Stock, 752,666 shares of the Common Stock and 151,005 of the Option Warrants of said United Company, constituting 7 percentum of the outstanding

voting securities of said Company, while the defendant Electric Company owns 884,610 shares of the $7 Second Preferred Stock and 3,795,086 shares of the Common Stock of said United Company, constituting 61.58 percentum of the outstanding voting securities of said Company.

Defendant National Power & Light Company has outstanding $9,500,000 principal amount of Six Per Cent Gold Debentures, Series A, due August 1, 2026; $15,000,000 principal amount of Five Per Cent Gold Debentures, Series B, due May 1, 2030, 279,716 shares of $6 Preferred Stock and 5,456,117 shares of Common Stock. Each share of common stock is entitled to one vote. Defendant Bond and Share owns 2,540,438 shares of the common stock of said National Company, constituting 46.56 percentum of the outstanding voting securities of said Company.

Defendant Lehigh Power Securities Corporation has outstanding $25,000,000 principal amount of Six Per Cent Gold Debentures, Series A, due February 1, 2026; $480,000 principal amount of the Fifty-Year Five Per Cent Collateral Trust Mortgage Gold
222 Bonds, due July 1, 1951, of Lancaster County Railway and Light Company assumed by the Lehigh Company; 130,000 shares of $6 Preferred Stock and 2,928,280 shares of Common Stock. Each share of stock of all classes has equal voting power. Defendant Bond and Share owns none of the outstanding voting securities of said Lehigh Company but defendant National Company owns 129,723 shares of the $6 Preferred Stock and 2,918,082 shares of the Common Stock of said Lehigh Company, constituting more than 99 per centum of the outstanding voting securities of said Company.

Defendant Easton Consolidated Electric Company has outstanding $1,237,000 principal amount of Collateral Trust 5% Gold Bonds, due May 1, 1949, and 30,000 shares of capital stock. Defendant Bond and Share owns none of the outstanding voting securities of said defendant Easton Consolidated Electric Company but Lehigh Valley Transit Company (98.18% of the outstanding voting securities of which are owned by defendant Lehigh Company) owns 99.96% of said capital stock of defendant Easton Consolidated Electric Company. In addition, Lehigh Valley Transit Company owns $991,000 principal amount of the above mentioned Collateral Trust Gold Bonds and defendant Lehigh Company owns $32,500 principal amount of such bonds.

Defendant American Gas and Electric Company has outstanding $50,000,000 principal amount of 5% Debentures, due 2028. It also has outstanding, exclusive of stock reacquired and held in its treasury, 355,623 shares of $6 Preferred Stock and $4,482,737 31/50 shares of Common Stock. Each share of preferred stock and common stock has equal voting power. Defendant Bond and Share owns 846,985 shares of the common stock of said American Gas, constituting 17.51 per centum of the outstanding voting securities of said Company.

223 In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS

Upon the annexed stipulation it is hereby

Ordered that Homer S. Cummings, individually and as Attorney General of the United States; James A. Farley, individually and as Postmaster General of the United States; James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross, individually and as members of the Securities and Exchange Commission, shall be brought into and made parties to this suit as cross-defendants to the counterclaim and cross-bill of the defendants; and it is

Further ordered that Central Arizona Light and Power Company, Montana Power Gas Company, Indiana & Michigan Electric Company, Spokane Central Heating Company, and Spokane United Railways, be and they are hereby permitted to intervene as additional defendants in this suit, and adopt as their own the pleadings of the defendants herein, with leave to set forth such

224 additional allegations as may be necessary in their bill of intervention, which shall be taken as part of their pleadings; and it is

Further ordered that such additional allegations shall be deemed to have been denied by the plaintiff and the cross-defendants without further pleading on their part.

Dated January 22, 1936.

JULIAN W. MACK,
U. S. C. J.

[Title of Court and cause.]

Stipulation as to Additional Parties

It appearing that the defendants and intervening defendants herein in their answer to the amended and supplemental bill of complaint propose to include in a separate defense a counterclaim and cross-bill, the issues presented by which may require the presence of parties other than those named in the said amended and supplemental bill, to wit, Homer S. Cummings, Attorney General of the United States; James A. Farley, Postmaster General of the United States; James M. Landis; Robert E. Healy; George C. Mathews; and James D. Ross; who are members of, and constitute the, Securities and Exchange Commission (the plaintiff herein):

It is hereby stipulated, without prejudice to the right of the plaintiff or said individuals as defendants to said counterclaim and cross-bill to assert as a defense thereto any matter of law or fact appearing upon the face thereof, or otherwise, except absence of necessary parties defendant to said counterclaim and cross-bill, improper venue, or lack of service of process; that an order may be entered herein bringing in said above-named individuals as cross-defendants to said counterclaim and cross-bill, and that the undersigned, solicitors for the plaintiff, without the service of subpoenas or other process, will appear on behalf of the said above named individual members of the Securities and Exchange Commission and Homer S. Cummings, Attorney General of the United States will appear on his own behalf and on behalf of James A. Farley, Postmaster General of the United States, and will answer said counterclaim and cross-bill on their behalf, and that this stipulation shall
225 constitute such appearances on behalf of all of said cross-defendants. It is agreed that in no event shall any personal judgment, decree, or order for costs be entered against the above named individuals, and defendants expressly waive any right that they may have, or may obtain by virtue of any order or decree subsequently entered herein to tax costs against said individuals.

It is further stipulated that Central Arizona Light and Power Company, Montana Power Gas Company, Indiana & Michigan Electric Company, Spokane Central Heating Company, and Spokane United Railways may be allowed to intervene as additional defendants, and to adopt as their own the pleadings of the defendants herein, and to set forth such additional allegations as may be necessary in their bill of intervention which shall be taken as part of their pleading, and such additional allegations shall be deemed to be denied by the plaintiff and the cross-defendants without further pleadings on their part.

The annexed Order may be entered without notice.
Dated January 21, 1936.

JOHN J. BURNS,
By R. H. J.,
ROBERT H. JACKSON,
Solicitors for Plaintiff,
The Securities and Exchange Commission.
SIMPSON THACHER & BARTLETT,
THOMAS D. THACHER,
JOHN F. MACLANE,
Solicitors for Defendants.
HOMER S. CUMMINGS,
By R. H. J.,
Solicitor for Cross-Defendants Homer S. Cummings, Attorney General of the United States and James A. Farley, Postmaster General of the United States.
JOHN J. BURNS,
By R. H. J.,
ROBERT H. JACKSON,
Solicitors for Cross-Defendants, James M. Landis, Robert E. Healy, George C. Mathews and James D. Ross, members of, and Constituting the, Securities and Exchange Commission.

226 In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY; AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; AND JAMES M. LANDIS, ROBERT E.

HEALY, GEORGE C. MATHEWS, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS

Bill of intervention

To the Honorable Judges of the United States District Court for the Southern District of New York:

The bill of intervention of Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company, and Spokane United Railways respectfully shows to this Court and alleges:

1. Central Arizona Light and Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Arizona and is a resident and citizen of the State of Arizona, with its principal office and corporate domicile in the City of Phoenix in said State.

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Indiana & Michigan Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana and is a resident and citizen of the State of Indiana, with its principal office and corporate domicile in the City of South Bend in said State.

Montana Power Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and is a resident and citizen of the State of New Jersey, with its corporate domicile in the City of Jersey City in said State, but with its principal office and place of business in the City of Butte, in the State of Montana.

Spokane Central Heating Company is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

Spokane United Railways is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

2. On or about January 22, 1936, an order was duly made and entered by this Court granting leave to Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company, and Spokane United Railways, hereinafter sometimes referred to collectively as the "subsidiary company defendants", to intervene as additional defendants in the above entitled action, to adopt as their own the pleadings of the other defendants, and to file this bill of intervention which is in answer to the Amended and Supplemental Bill of

Complaint of the plaintiff, and by way of counterclaim and cross-bill against the plaintiff and cross-defendants named in the defendants' counterclaim and cross-bill filed herein.

3. Section 2 (a) of the Holding Company Act (hereinafter called the "Act") defines the following, among other, terms: Electric utility company, Gas utility company, Public-utility company, Holding company, Subsidiary company, Holding-company system, Registered holding company, Security and Voting security. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2 (a) of said Act. When the term "Answer" is hereinafter used it refers to the answer of the original defendants and the intervening defendants, including the separate defense, counterclaim and cross-bill, filed herein.

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4. Central Arizona Light and Power Company and Montana Power Gas Company are subsidiary companies of American Power & Light Company. Indiana & Michigan Electric Company is a subsidiary company of American Gas and Electric Company. Spokane Central Heating Company and Spokane United Railways are subsidiary companies of The Washington Water Power Company and thereby of American Power & Light Company. The ownership of the voting stock of the above named subsidiary companies by the above named holding companies is set forth in paragraphs 32 and 36 of, and in paragraph (q) of Exhibit I to, the Answer. By reason of being subsidiary companies of the above holding companies, said subsidiary company defendants are, by definition of Section 2 (a) of the Act, subsidiary companies of Electric Bond and Share Company.

5. None of the subsidiary company defendants is a "Holding company" as defined in Section 2 (a) of the Act.

6. Central Arizona Light and Power Company is an electric utility company and a gas utility company. Indiana & Michigan Electric Company is an electric utility company. Montana Power Gas Company, Spokane Central Heating Company and Spokane United Railways are not public utility companies as defined in said Act.

7. Central Arizona Light and Power Company has for many years conducted and still conducts an electric utility business and a gas utility business solely within the State of Arizona. Said business and the location of the utility assets used in said business are more fully described in paragraph (a) of Exhibit I to the Answer.

8. Indiana & Michigan Electric Company has for many years conducted and still conducts an electric utility business in the States of Indiana and Michigan. The Company owns certain transmission lines which cross the Indiana-Michigan boundary. Substantial

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amounts of electric energy are transmitted by the Company across such state boundary and are ultimately sold to retail customers of the Company or at wholesale. The Company also has certain transmission lines extending to the Indiana-Ohio boundary which are used for the purpose of exchanging electric energy with, and receiving electric energy from, an associate electric utility company having properties outside the State of Indiana. The business of

said defendant and the location of its utility assets are more fully described in paragraph (c) of Exhibit V of the Answer.

9. Montana Power Gas Company has for many years conducted and still conducts a natural gas business, including an incidental business in by-products, solely within the State of Montana. The Company also purchases substantial amounts of natural gas from sources solely within the State of Montana. The business of said defendant and the location of its properties are more fully described in paragraph (f) of Exhibit I to the Answer.

10. Spokane Central Heating Company has for many years conducted and still conducts a central heating business in a portion of the business district of the city of Spokane in the State of Washington by means of a central steam heating plant and steam pipes and mains. All of the facilities of the Company used in the conduct of its business are located solely within the State of Washington and steam heat is furnished solely to purchasers within said State. Said defendant is referred to in paragraph (q) of Exhibit I to the answer.

11. Spokane United Railways has for many years conducted and still conducts an electric street railway and bus service in the City of Spokane in the State of Washington. All of the facilities of the Company used in the conduct of its business are located solely within the State of Washington and electric street railway service and bus service are rendered solely within the State of Washington. All the electricity used in the operation of the street railway properties is purchased in said State of Washington. Said defendant is referred to in paragraph (q) of Exhibit I to the Answer.

12. Upon the foregoing, each of the subsidiary company defendants alleges that it is a company engaged solely in intrastate business within the state or states in which it operates, subject to the
230 jurisdiction of such state and the regulatory authorities thereof; that it is not engaged in, and its activities do not affect, commerce with foreign nations or among the several states, and that it is not subject to regulation or supervision by the Federal government or any agency or instrumentality thereof, save as any of the operations of the defendant Indiana & Michigan Electric Company, as more fully described in paragraph (c) of Exhibit V to the Answer, may be held to constitute commerce between the states, which said operations are severable and distinct from the operations of said defendant within the States of Indiana and Michigan and constitute a minor and incidental part of said defendant's operations.

13. Defendants Central Arizona Light and Power Company, Indiana & Michigan Electric Company, and Spokane United Railways are subject to the regulations of, and are regulated by, the public service commissions of the states in which they respectively operate, under and in accordance with the terms of the several public utilities acts of said states, to wit, Central Arizona Light and Power Company by the Arizona Corporation Commission, Indiana & Mich-

igan Electric Company by the Indiana Public Service Commission, and the Michigan Public Utilities Commission, and Spokane United Railways by the Washington Department of Public Service. In so far as any of the business of defendant Indiana & Michigan Electric Company may not be fully subject to regulation by the commissions of Indiana and Michigan, and may be subject to any degree of Federal regulation, such business, as hereinbefore alleged, is a minor part of, and severable and distinct from, its intrastate business.

In addition to the general power of regulation of rates and charges for, and conditions of, service and matters incidental thereto, each of the above named commissions has some of the following powers of regulation, among others, over the respective defendants subject to their jurisdiction (the states named after each power being those whose commissions have been specifically given such power): (1) investigation of management (Indiana); (2) inspection of books (Arizona, Indiana, Michigan, Washington); (3) regulation of accounts and statistics (Arizona, Indiana, Michigan, Washington); (4)
regulation of depreciation or retirement account (Arizona,
231 Indiana, Washington); (5) production of books and other
information and filing of reports (Arizona, Indiana, Michigan, Washington); (6) supervision of issuance of securities (Arizona, Indiana, Michigan, Washington); (7) supervision of sale, lease, transfer, mortgage or merger of properties and franchises (Arizona, Indiana); (8) supervision of acquisition of securities or properties of another public utility (Arizona, Indiana, Washington); (9) supervision of payment of dividends (Washington); (10) supervision of budget expenditures (Washington); (11) supervision of contracts with affiliated interests for management, construction, engineering, accounting or similar services (Indiana, Washington).

Defendant Spokane Central Heating Company and defendant Montana Power Gas Company are not now subject to similar regulation by any state agency but are subject generally to the laws of the States of Washington and Montana, respectively.

14. By the provisions of the Act, each of the subsidiary company defendants as a subsidiary company of one or more of the holding company defendants would be and become fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations if this Court should order said holding company defendants to register under Section 5 of said Act. The subsidiary company defendants are advised by counsel and believe that these provisions of the Act as applied to them are wholly unconstitutional, void and of no effect for the reasons stated in the Answer.

15. None of the subsidiary company defendants as a subsidiary company of one or more of the other defendants is entitled to apply for exemption from the provisions of said Act and no such exemption has been granted to them or any of them by order of the Commission. Nor has any of their holding companies been granted exemption except that by Rule 3 A-2 adopted by said Commission, temporary exemption was granted to a class of companies of which

defendant The Washington Water Power Company is one, and by virtue of said rule defendants Spokane Central Heating Company and Spokane United Railways are temporarily exempted from the provisions of the Act as subsidiaries of The Washington Water
232 Power Company. The exemption of defendant The Washington Water Power Company is a temporary exemption existing in the sole discretion of the Commission and defendants Spokane Central Heating Company and Spokane United Railways have no means of knowing whether said exemption will continue after February 2, 1936. Moreover, if this Court should order defendant Electric Bond and Share Company, or defendant American Power & Light Company to register under the Act, the exemption of The Washington Water Power Company, even if continued, would be of no avail to defendants Spokane Central Heating Company and Spokane United Railways since they would be and become fully subject to the jurisdiction of the Commission as subsidiary companies of defendants Electric Bond and Share Company and American Power & Light Company.

16. If the Court should order the defendants which are holding companies of the subsidiary company defendants to register under Section 5 of the Act, each of the subsidiary company defendants would be and become, as hereinabove alleged, fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations. Immediately upon said registration and in consequence thereof, it would be and become unlawful by the terms of the Act for any of the subsidiary company defendants, without the prior approval of the Securities and Exchange Commission, or in contravention of any rule, regulation or order from time to time by it deemed necessary or appropriate, to do any of the things enumerated in the second paragraph of Paragraph 46 of the Answer, except such things as are included within subsection (6) of said paragraph. Each of the subsidiary company defendants would likewise be subject to regulation by the Commission in respect of those matters referred to in the third and fourth paragraphs of Paragraph 46 of the Answer, which are therein stated to be applicable to subsidiary companies of registered holding companies.

If the said defendant holding companies are ordered by this Court to register under Section 5 of the Act, the subsidiary company defendants will likewise be subject to the provisions of Section 26 (b) thereof, set out in Paragraph 43 of the Answer, and that portion of the penalty provision of Section 29, likewise set out in Paragraph 43 of the Answer, which is applicable to subsidiary companies of registered holding companies.

233 17. The subsidiary company defendants adopt, upon information and belief, all the admissions, denials, and allegations contained in the Answer and make said Answer and the allegations of this bill their answer, counterclaim, and cross-bill to plaintiff's Amended and Supplemental Bill of Complaint.

Wherefore the above named subsidiary company defendants pray for the relief requested in the Answer counterclaim and cross-bill of the other defendants herein, to wit: that the Amended and Supplemental Bill of Complaint be dismissed and that said Holding Company Act be declared unconstitutional, null, and void, and that the plaintiff and the cross-defendants be restrained and enjoined from enforcing the same; and further pray that in the event that any other defendant, which is as to these subsidiary company defendants a holding company, be required to register under said Act, the rights, liabilities, and duties of these subsidiary company defendants consequent upon such registration be decreed and determined.

And for such other and further relief as to the Court may seem meet.

SIMPSON THACHER & BARTLETT,
120 Broadway, New York, N. Y.,
Solicitors for Above-named Intervenors and Subsidiary Company Defendants.
THOMAS D. THACHER,
JOHN F. MACLANE,
DOUGLAS A. CALKINS,
Of Counsel.

In Supreme Court of District of Columbia

Answer to motion for inclusion of affidavit and exhibits

Filed February 26, 1936

* * * * * * *

The plaintiff, The North American Company, in response to the motion filed herein and served upon its counsel of record on February 19, 1936, requesting that the affidavit of Homer Cummings sworn to the same day, and the Exhibits annexed thereto, be included in the printed transcript of the record on the special appeal by the plaintiff from the order of this Court entered on January 9,
234 1936, staying the proceedings in the above entitled cause, respectfully says:

1. The plaintiff is advised by its counsel that this Court is without power, at least without the consent of the plaintiff, to incorporate in the record on the plaintiff's aforesaid appeal to the United States Court of Appeals for the District of Columbia, the affidavit of the Attorney General, verified February 19, 1936, or any of the Exhibits referred to in said affidavit, or any part of said affidavit or Exhibits.

2. In addition, and as appears more particularly in paragraphs 4 and 5 hereof the plaintiff denies that certain statements in said affidavit of Homer Cummings are in all respects true.

3. The plaintiff nevertheless is willing, if the same may lawfully be done by the order of this Court and/or by the order of said Court

of Appeals and/or by stipulation of the parties, to have its said appeal heard and determined in said Court of Appeals on a record which shall include said affidavit of the Attorney General and said Exhibits, and that said affidavit and Exhibits may be considered as having been a part of the record on which the order of this Court from which the plaintiff is appealing was made and entered. Provided, however,

(a) That, for the information of the Court of Appeals, there be also incorporated in said record on appeal a copy of the aforesaid motion of the defendants of February 19, 1936, and a copy of this answer thereto, together with a copy of any order of this Court on said motion and of any stipulation between the parties which may be entered into with respect to said motion;

(b) That said affidavit of the Attorney General and said Exhibits be considered as incorporated in said record on appeal only to the extent that said affidavits and Exhibits state facts which are not denied in paragraphs 4 and 5 hereof; and

(c) That Exhibit G annexed to said affidavit of the Attorney General (the amended and supplemental bill of complaint of the Securities and Exchange Commission in the Electric Bond and Share case) be considered on said appeal merely as a bill of complaint, alleging facts which the plaintiffs therein believe to be true and which therefore they would be willing to verify if verification of such bill were necessary.

235 (d) That nothing in this answer contained be taken or construed as an admission by the plaintiff that any of the statements concerning it contained in the quotations from the so-called Splawn Report set forth in paragraph 11 of the said affidavit of the Attorney General were true of the plaintiff at the time when its bill of complaint herein was filed or are now true.

(e) That the defendants consent that there also be incorporated in the record on appeal the following additional facts, hereby alleged by the plaintiff, with respect to the cases referred to in paragraph 9 of the Attorney General's said affidavit—namely, that the bills of complaint in said cases have been or shortly will be dismissed as against the defendants therein who are also defendants in this suit, or that the service of process against said defendants has been or shortly will be quashed; that the remaining defendants in said cases namely, the local district attorneys (and in some cases also the local post masters and other local officials) have defaulted or will default by failing to answer or otherwise move with respect to the bills of complaint therein, with the result that orders in said cases have been or shortly will be entered that said bills of complaint be taken pro confesso as against said local defendants; that therefore none or practically none of said cases will be heard or determined on the merits that the aforesaid dismissals, or (as the case may be) the aforesaid quashing of the service of the process, in said cases as against said defendants in said cases who are also defendants herein

were made on their own motions, on the ground of the improper venue of said suits as against them, or (as the case may be) on the ground that the service of process on said defendants (which in all cases was outside of the district in which the suit was pending) was null and void; and that the aforesaid action of said local defendants in all said cases in suffering said bills of complaint to be taken pro confesso as against them was taken under the advice or instructions of one or more of the defendants herein.

4. With respect to the allegation in said affidavit of Homer Cummings that:

"All of the facts set forth in this affidavit with the exception of Exhibit J described in paragraph 15 were called to the atten-
236 tion of the Court and of opposing counsel in the briefs and oral arguments heretofore submitted on behalf of the defendants in the above entitled causes."

plaintiff denies that said allegation is correct if it is intended to be broad enough to include any one of the following specific allegations of fact:

(a) An allegation that Exhibit B, annexed to said affidavit, purporting to be a true and correct copy of a supplemental bill of complaint in the suit filed by the Securities and Exchange Commission against the Electric Bond & Share Company and certain of its corporate subsidiaries, was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants. The only way in which said supplemental bill of complaint was called to the attention of the Court and opposing counsel was by the bare statement of the defendants in their reply brief filed after the argument that the Government "has filed an amended supplemental bill" in that suit.

(b) An allegation that Exhibit H, annexed to said affidavit—purporting to be a schedule setting forth the names of the plaintiffs in each of the forty-nine proceedings alleged to have been pending on December 12, 1935, in the District Court of the United States for thirteen districts seeking an adjudication of the constitutionality of the Public Utility Holding Company Act of 1935, the Court in which each such proceeding is pending, and the date upon which the bill of complaint therein was filed—was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants.

5. With respect to the other allegations in said affidavit plaintiff denies that said affidavit is correct in the following particulars:

(a) It is incorrect if it is intended to assert that any of the statements quoted in it on pages 3 and 4 from the so-called Splawn Report contradict or are inconsistent with any of the allegations of the plaintiffs' bill of complaint. In so far as said affidavit is intended to allege that any of said quoted statements are both true and in contradiction of or inconsistent with any of the allegations of said bill of complaint, said affidavit is incorrect.

(b) It is incorrect if the allegations contained in it that "the
237 Electric Bond and Share Company * * * comes in contact with the Act at more points than any other holding company system" is intended as meaning more than that Electric Bond and Share Corporation may be or may have been engaged in some activities not engaged in by the plaintiff, which activities, under the terms of the Act, either are unlawful for a non-registered holding company or would be unlawful for a registered holding company without compliance with the provisions of the Act.

6. Except, therefore, to the extent stated in this answer the plaintiff opposes said motion of the defendants herein for the reasons hereinabove stated.

JOHN C. HIGGINS,
48 Wall Street, New York, N. Y.,
JOHN S. FLANNERY,
Hibbs Building, Washington, D. C.,
Attorneys for Plaintiff.
SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.,
Of Counsel.

[*Duly sworn to by Herbert C. Freeman, jurat omitted in printing.*].

238 In Supreme Court of District of Columbia

In Equity. No. 60136

(Title omitted.)

Stipulation re amendment of answer

Filed February 26, 1936

* * * * * * *

It is hereby stipulated and agreed by and between the parties hereto that paragraph 3 (e) and paragraph 4 (a) of Plaintiffs' answers, filed February 26, 1936, to motion of defendants, filed herein February 18, 1936, be amended to read as follows:

3 (e). That the defendants consent that there also be incorporated in the record on appeal the following additional facts, hereby alleged by the plaintiff, with respect to the cases referred to in paragraph 9 of the Attorney General's said affidavit—namely, that the bills of complaint in some of said cases have been dismissed as against the defendants therein who are also defendants in this suit, or that the service of process therein against said defendants has been quashed; that the remaining defendants in some of said cases, namely, the local district attorneys (and in some cases also the local postmasters and other local officials) have defaulted by failing to answer or otherwise move with respect to the bills of complaint therein, with the result that orders in some of said cases have been entered that

said bills of complaint be taken pro confesso as against said local defendants; that in all or virtually all of the remainder of said cases the defendants herein who are also named as defendants in said cases have moved that the bills of complaint be dismissed as against them, or that service of process against them be quashed; that the aforesaid dismissals or motions for dismissals, or (as the case may be) the aforesaid quashing of the service of the pro-
239 cess or motions for quashing of service of the process, in said cases as against said defendants in said cases who are also defendants herein were made on their own motions, on the ground of the improper venue of said suits as against them, or (as the case may be) on the ground that the service of process on said defendants (which in all cases was outside of the district in which the suit was pending) was null and void; and that the aforesaid action of said local defendants in the several cases in which said bills of complaint have been suffered to be taken pro confesso as against them was taken under the advice or instructions of one or more of the defendants herein.

4 (a). An allegation that Exhibit B, annexed to said affidavit, purporting to be a true and correct copy of a supplemental bill of complaint in the suit filed by the Securities and Exchange Commission against the Electric Bond & Share Company and certain of its corporate subsidiaries, was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants. However, a copy of said amended and supplemental bill was transmitted to the Court by defendants' counsel under cover of their letter of December 24, 1935, copy of said letter being transmitted at the same time to counsel for plaintiff.

With the foregoing amendments, the parties hereto agree that the defendants' motion, the affidavit of Homer Cummings and exhibits therewith, the plaintiff's answer to said motion and this stipulation and the order of the Court this day entered shall be filed and made a part of the transcript of record to be transmitted to the Court of Appeals, subject to the qualifications contained in plaintiff's said answer, as amended by this stipulation.

JOHN S. FLANNERY.
JOHN C. HIGGINS,
J. C. B.,
Attorneys for Plaintiff.
HOMER S. CUMMINGS,
R. H. J.,
JOHN J. BURNS,
R. H. J.
Attorneys for Defendants.

February 26, 1936.

240 In Supreme Court of District of Columbia

Order as to motion, affidavit, etc.

Filed February 26, 1936

* * * * * * *

This cause came on to be further heard on the 26th day of February 1936, on motion of defendants to perfect the record in this cause by incorporating therein an affidavit of Homer Cummings and appended exhibits, and upon consideration of said motion, the answer of the plaintiff thereto, and the stipulation of the parties, it is this 26th day of February 1936,

Ordered that said motion, affidavit, and exhibits, the answer of the plaintiff thereto and the stipulation of the parties and this order be filed as part of the transcript of record in this cause.

JENNINGS BAILEY,
Justice.

In Supreme Court of District of Columbia

Assignment of errors

Filed February 20, 1936

* * * * * * *

Comes now the plaintiff, The North American Company, by its attorneys, and states that this Court (Bailey, J.) by order entered January 9, 1936, erred as follows:

1. In granting the motion of the defendants to stay the proceedings herein.

2. In entering the order of January 9, 1936, staying the proceedings in this cause to await the outcome of another proceeding in the courts of a foreign jurisdiction, between other parties and involving different issues, which this Court has no power to control.

3. Because said order is in effect an injunction against the assertion of plaintiff's rights during the period specified and denies to plaintiff its statutory and constitutional right to have the questions of fact and law raised in its bill of complaint speedily determined and conclusively adjudicated by the Courts of this jurisdiction.

4. Because said order will cause plaintiff irreparable injury,
241 impair its freedom of contract and deprive it of the right to the enjoyment and use of its property, without any pecuniary redress.

5. Because the Court had no power or jurisdiction to enter said order.

6. Because said order constitutes an abuse of any discretion which the Court may have had in the premises and is arbitrary and capricious.

7. Because said order is not supported by any facts properly before the Court.

8. Because the Court made no findings of fact and separate conclusions of law as required by equity rule No. 70½ of the Supreme Court of the United States promulgated November 25, 1935.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for Plaintiff,
The North American Company.

Service of a copy of the foregoing assignment of errors is acknowledged this 20th day of February 1936.

HOMER CUMMINGS,
Atty. Gen.
By UGO CARUSI,
Executive Asst.
JOHN J. BURNS,
Attorneys for Defendants.

In Supreme Court of District of Columbia

Designation of record

Filed February 20, 1936

* * * * * * *

Now comes The North American Company, the plaintiff in the above entitled cause, by its attorneys of record, and designates the following for inclusion in the transcript of record on appeal in the above entitled cause:

1. Bill of Complaint.
2. Motion of Defendants to Stay Proceedings.
3. Answer of Plaintiff to Defendants' Motion for a Stay and Exhibit.
4. Memorandum of Bailey, J., filed January 6th, 1936, sustaining motion to Stay.
5. Order of Bailey, J., entered January 9th, 1936, staying further proceedings.

242 6. Order of the United States Court of Appeals for the District of Columbia, dated February 17th, 1936, granting Petition for Allowance of a Special Appeal.

7. Plaintiff's Assignment of Errors.
8. This Designation of Record.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for Plaintiff, Appellant.

Service of a copy of the foregoing Designation of Record is acknowledged this 20th day of February 1936.

HOMER CUMMINGS,
Atty. Gen.

By UGO CARUSI,
Executive Asst.

JOHN J. BURNS,
Attorneys for Defendants.

[Clerk's certificate to foregoing transcript omitted in printing.]

243 In United States Court of Appeals for District of Columbia

January term, 1936

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT,

v.

JAMES M. LANDIS ET AL., APPELLEES

Stipulation as to transcript of record filed March 2, 1936

It is stipulated by counsel for the respective parties in the above entitled cause that in printing the record, the Clerk shall omit therefrom Exhibit A, pages 36 to 55, inclusive, of the typewritten record, said exhibit being a copy of the original bill of complaint in the case of Securities and Exchange Commission v. Electric Bond and Share et al., as said original bill of complaint is superseded by the amended and supplemental bill of complaint in said latter case which is included in the typewritten record at pages 80 to 114¾.

JOHN S. FLANNERY,
L.,
JOHN E. LARSON,
Attorneys for Appellant.
HOMER S. CUMMINGS,
B. V. C.,
JOHN J. BURNS,
B. V. C.,
Attorneys for Appellees.

[File endorsements omitted.]

245 United States Court of Appeals for the District of Columbia

Original No.

THE NORTH AMERICAN COMPANY, PETITIONER *vs.* JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION OF THE UNITED STATES, HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, RESPONDENTS

Petition for allowance of special appeal

To the Honorable Chief Justice and the Associate Justices of the United States Court of Appeals for the District of Columbia:

Comes now your petitioner and prays for the allowance of a special appeal from an order of the Supreme Court of the Dis-
246 trict of Columbia entered therein on the ninth day of January 1936 by Mr. Justice Bailey in the case of The North American Company, Plaintiff *v.* James M. Landis, et al., Defendants, Equity No. 60136, and for reasons in support thereof, respectfully shows unto this Court:

I

Said order is an order staying all proceedings in petitioner's said suit "until the validity of" the Public Utility Holding Company Act of 1935 "has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company, et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated."

II

Because of the facts hereinafter alleged, said stay of petitioner's said suit in the court below is now causing petitioner irreparable damages, which damages will continue to increase unless and until said stay is vacated. Said stay is a grave abuse of any power of discretion which the court below may have had in the premises. It operates practically as an injunction against the assertion of petitioner's rights during the period specified, and denies to
247 petitioner its constitutional right to a reasonably prompt trial of the issues involved in its said suit, impairs its freedom of

contract and deprives it of the right to the enjoyment and use of its property. Petitioner therefore alleges that the granting of the appeal for which it petitions is necessary in the interest of justice.

III

The facts with respect to petitioner's said suit and said suit in favor of which petitioner's suit is stayed, and with respect to said stay are as follows:

1. Petitioner is a New Jersey corporation.

2. It is a "holding company" within the definition of that term contained in Title I of the Act of Congress, approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" (Pub. No. 333, 74th Cong. 1st Sess.) (hereinafter called "the Act").

3. Under the provisions of Section 4 (b) of the Act, petitioner is required on or before December 1, 1935, to register with the Securities and Exchange Commission (hereinafter called "the Commission"), created by an Act of Congress, approved June 6, 1934, known as "the Securities Exchange Act of 1934" (48 Stat. 881).

248 4. Petitioner has not registered under the Act and does not intend to do so, having been advised by counsel that the Act, as to petitioner, is unconstitutional in its entirety. It has alleged in its bill of complaint in the court below, and hereby realleges, that the inevitable and irreparable damages which it will suffer from registering will be at least as great as those which it will suffer from not registering, and it is advised by counsel (as is also alleged in said bill) that its right to challenge the constitutionality of the Act may be prejudiced by registering under it.

5. On November 26, 1935, it filed its bill in equity in the court below, naming as defendants the respondents herein (hereinafter called the "defendants"; namely, the four members of the Commission, the Attorney General, and the Postmaster General of the United States.

6. The defendants were served with process on the same day, and thereafter appeared in the court below and moved for the stay, as is hereinafter in paragraph 17 alleged.

7. The Commission is specifically charged by the Act with the enforcement and administration of its provisions. The Attorney General is specifically empowered by Section 18 of the Act to enforce its criminal provisions. Many of the provisions of the Act

249 prohibit the use of the mails for certain specified purposes by both unregistered and registered holding companies. It is the duty of the Postmaster General, as prescribed by law, to enforce said last named provisions of the Act.

8. Petitioner's bill alleges the unconstitutionality of the Act as a whole as against petitioner and seeks a permanent decree restraining the defendants from seeking to enforce its provisions against petitioner. Petitioner's bill also seeks a declaration of the unconsti-

tutionality of the Act as a whole as against petitioner, under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stats. 955, Title 28 U. S. C. A. § 400) (hereinafter called "the Declaratory Judgment Act").

9. Petitioner's bill invokes the equitable jurisdiction of the court to enjoin the enforcement of the Act as unconstitutional, under principles established in the leading cases of Ex Parte Young, 209 U. S. 123; Pierce v. Society of Sisters, 268 U. S. 510; Euclid v. Ambler Realty Co., 272 U. S. 365; and Terrace v. Thompson, 263 U. S. 197.

10. The bill alleges both (a) threats to enforce the Act against petitioner (Article XIII (a) and (b)),[1] and (b) with great
250 circumstantiality (Articles VII, VIII, IX, XII, and XIV) exactly how the provisions of the Act (which are alleged with the same circumstantiality) are now causing petitioner irreparable damages, and why these damages will continue to increase until petitioner obtains a final decree granting the prayers of the bill. The bill shows that these damages result from the practically complete paralysis of petitioner's normal and necessary business activities caused by the cloud which the provisions of the Act and the activities of the defendants thereunder cast on the validity of all of petitioner's business and transactions, including its contracts and the continued holding and voting of the stock of its subsidiary corporations.

11. On the same day that petitioner's bill was filed in the court below (November 26, 1935, the Commission filed its bill in equity in the United States District Court for the Southern District of New York against Electric Bond and Share Company (hereinafter called "Electric Bond") and five of its corporate subsidiaries.

12. The defendants in said Electric Bond suit are alleged to be holding companies within the definition of the Act and to be required to register with the Commission on or before December 1, 1935, as aforesaid.

251 13. The bill in said suit asks only that the defendants be required by mandamus to register under Section 4 (b) of the Act and that they be enjoined from violating the provisions of Section 4 (a) thereof.

14. Within approximately four days after the commencement of the two aforesaid suits, six other corporations, which are also holding companies within the definition of the Act, filed their bills in equity in the court below against the defendants.

15. These bills seek, on substantially the same grounds, the same relief sought by petitioner in its bill, except that some of them do not seek relief under the Declaratory Judgment Act.

16. The same or similar relief has been sought in different United States District Courts by a large number of other corporations which are also holding companies within the definition of the Act.

---

[1] Petitioner will submit a copy of the bill to the court should it care to examine the same in connection with this petition.

On information and belief, these bills name as parties defendant the United States District Attorneys in the respective districts and the local Postmasters, and some of them name other defendants, including the defendants named in petitioner's bill.

17. On December 7, 1935, the defendants made their aforesaid motion for a stay of all further proceedings in petitioner's
252 suit and also in the other above mentioned suits in the court below, until the final determination, by decision of the Supreme Court of the United States, or otherwise, of the aforesaid suit of the Commission against Electric Bond in New York.

18. The motion was signed by the Attorney General of the United States and by the general counsel for the Commission, without supporting affidavits.

19. The motion did not allege, and there has been no later attempt by the defendants to show:

(a) How soon the Electric Bond case would probably be at issue on bill and answer or otherwise. (In this connection petitioner also alleges that since said motion was made and on or about December 21, 1935, an amended bill has been filed in said case, and that as yet none of the defendants have answered it.); or

(b) How soon the Electric Bond case would probably be reached for hearings on bill and answer or otherwise; or

(c) That the Electric Bond case would probably be reached for hearing before petitioner's case or before any of the other cases in the court below; or

(d) How soon a final determination of the Electric Bond case may reasonably be expected.

20. In their briefs and arguments on this motion the defendants asserted that the taking of testimony in the Electric Bond
253 case on the hearings on the bill and answer would require at least six months.

21. The only reasons for the stay alleged in said motion were

(a) The pendency of the suits hereinabove mentioned in the court below and in other courts to enjoin the enforcement of the Act;

(b) That the Government "is anxious to secure an early determination of" the constitutionality of the Act; that to that end the Commission has instituted the above mentioned suit against Electric Bond; that this suit "will be prosecuted with all due diligence to secure from the Supreme Court" a decision as to "the validity of the essential features of the Act"; and

(c) A statement that "no public interest will be served by pressing for a decision of this issue in a multitude of suits", but that this "will tend to clog the courts, overtax the facilities of the Government and make against that orderly and economical disposition of the controversy which is the Government's aim."

22. At no stage of the proceedings on the motion have the defendants attempted to show that the issues in the Electric Bond case are identical with the issues in petitioner's suit, or with the issues in

any of the other suits attempted to be stayed. The most that the defendants have asserted in this connection is that the decision
254 in the Electric Bond case would "simplify the issues" and furnish a "valuable precedent" in the suits to be stayed.

23. On the contrary, petitioner has shown that the allegations of the Commission's own bill in the Electric Bond case show that that company differs essentially from petitioner, and in particular that the bill in that case relies specifically, in support of the constitutionality of the Act as against Electric Bond, on alleged activities of that company which petitioner's bill expressly denies this petitioner engages in. If, as the allegations in the bill against Electric Bond seem to indicate, proof that Electric Bond is engaged in such activities is essential to establish the constitutionality of the Act as against Electric Bond, the Act is presumably unconstitutional as against petitioner.

24. Petitioner has also shown, and the defendants do not deny, that it is possible that the Electric Bond case will be held to involve only the question of the constitutionality of Section 4 of the Act, requiring certain holding companies to register and making illegal certain specified acts by unregistered holding companies.

25. The defendants have not attempted to deny that the question of the constitutionality of the Act may well be held to be in-
255 volved in a much broader and more comprehensive way under the issues presented by petitioner's bill than under those presented by the bill in the Electric Bond case.

26. On the argument of the motion counsel for petitioner, speaking on behalf of petitioner and of all the other complainants in the court below, made to the defendants the following proposal:

"If counsel for the Government really want in these cases to avoid a multiplicity of trials and suits and proceedings and if they will meet any of our overtures half way, I undertake to say that it will not be difficult for us to agree upon a group of three or four cases which will present every question that is involved in this multitude of suits, so that every one of these companies may be satisfied that its rights will be promptly determined—consolidate them all in one case, in one court, and try them out—so that the Government need not multiply its staff and need not exhaust its budget; and if it can go ahead, if it wants to go ahead, to a fair determination of those issues in one case, in one court, we will know then, in a year's time, perhaps, just what the fate of all these companies is to be."

The Attorney General in open court declined unconditionally even to consider this offer.

27. In their briefs on the motion and in their oral argument the defendants offered to consent to a temporary injunction against
256 them in the suits sought to be stayed, said injunctions to remain in effect pending the final decision in the Electric Bond case. The allegations of paragraph 10 of this petition show why such a temporary injunction would not prevent the damages which

petitioner is suffering and will continue to suffer until the Act is declared unconstitutional as to it, and until the defendants are permanently restrained from enforcing the Act against it, and why therefore petitioner could not accept said offer and has not prayed for a temporary injunction in its bill.

28. In their briefs on the motion the defendants have urged, as additional reasons for the requested stay against petitioner.

(a) That petitioner's bill does not state a cause of action entitling it to equitable relief; and

(b) That it does not show any ground for relief under the Declaratory Judgment Act.

But the defendants have made no motion to dismiss on these or any other grounds.

29. In their oral arguments and briefs on the motion the defendants threatened that if the requested stays were not granted they might not defend petitioner's suit or the other suits in the court below, but might suffer decrees to be taken against them, and
257 that in such event they might not appeal from such decrees; and they further asserted or intimated that, if this were done and if subsequently the Act should be held constitutional in the Electric Bond case, such a decision would make it impossible thereafter to enforce the decrees against them in petitioner's suit and the other suits in the court below.

30. In their briefs and arguments on the motion the defendants referred to

(a) Announcements made by the Commission to the effect that holding companies which registered under the Act might do so without prejudice to their rights thereafter in any way to challenge its constitutionality. (For the reasons hereinabove in paragraph 4 stated, petitioner has refused to register under the Act, despite the aforesaid announcement of the Commission); and

(b) An announcement by the Attorney General that he does not at present intend to prosecute non-registering holding companies for penalties imposed on such companies by Section 29 of the Act until after a final judicial adjudication with respect to the validity of the Act, and to his "suggestion" to the same effect in a circular letter to the Federal District Attorneys; and

(c) Instructions issued by the Postmaster General to postmasters not for the present to refuse the use of the mails to non-registering holding companies.

258 31. On the facts hereinabove in paragraphs 1 to 30, inclusive, alleged, the court below granted the stay requested by the defendants.

32. With respect to the suits, hereinabove in paragraph 16 referred to, commenced in various of the District Courts of the United States, the opinion of the court below in granting the requested stay states: "Counsel seem to agree that these latter cases are defective for want

of jurisdiction, and that it is likely that if dismissed in the Courts where they are now pending, they will be filed in this Court."

33. Petitioner is advised by its counsel and therefore alleges that counsel for this petitioner has never conceded and does not believe that said cases in other Federal courts are defective or will probably be dismissed for want of jurisdiction. The claim of jurisdictional defects in said cases is solely that of counsel for the defendants, and the learned court was therefore mistaken in said statement quoted in paragraph 32 above.

IV

Petitioner respectfully submits the following reasons for asking this Court to grant its petition for said special appeal and for holding that the stay of proceedings granted by the court be-
259 low constitutes a gross abuse of any discretion which it may have had in the premises.

1. Even a mere stay of legal proceedings already commenced may constitute an unlawful infringement of constitutional rights. Sliosberg v. New York Life Insurance Co., 244 N. Y. 482.

2. A stay granted to A in an action or suit against him by B until the final decision of a proceeding brought by the applicant, A, against another party in another jurisdiction is a remedy of an extraordinary nature, which should be granted, if at all, only in the most unusual and compelling cidcumstances, even when the issues in the two proceedings are identical. Such a stay enables a party to a controversy between himself and different separate parties, involving the same question or issue, to select not only the adversary party with whom such issue is first to be tried to final judgment, but also the court in which it is to be tried, and possibly also the judge who will try it, and no court should confer such a favor on any litigant. In a matter of this sort, the discretion of a court of equity can be no wider than that of a court of law.

3. Where, as in the case at bar, the issues are not identical, to grant a blanket in-limine stay is a flagrant abuse of any discretion which a court may have in such matters, and a violation of constitu-
260 tional rights, where, as also in the case at bar, there are present the following additional facts:

(a) The applicant for the stay has made no attempt to show that the proceeding which he seeks to prefer, will, in the usual and probable course of events, be promptly tried and tried before the proceedings which he asks to have stayed;

(b) The stayed suits are a number of substantially identical suits against the applicant for the stay in the court of his own domicile;

(c) The preferred suit is a single suit in another jurisdiction, which the court that grants the stay cannot control;

(d) The issues in the suits to be stayed will probably be broader and more comprehensive than those in the preferred suit;

(e) The parties stayed will suffer irreparable injury during the stay and because of the stay, against which injury there is no indemnity by bond, or otherwise; and

(f) The applicant for the stay has refused even to consider an offer made by the parties stayed to stipulate with him that only a few of the entire number of suits, to be selected by agreement between the adversary parties, shall be tried (and, if the applicant wishes, tried together in one consolidated case), as test suits of the issues involved in them.

4. None of the following additional facts, relied upon by the defendants, justifies the stay which has been granted here:

261 (a) The fact that other similar suits are pending in other jurisdictions, which suits may later be dismissed or withdrawn, and might thereafter be recommenced in the court below. That bridge should not be crossed until it is reached.

(b) The defendants' contention that the pending bills in the court below, or any of them, are insufficient in law—either because the bills show no ground for equitable relief against the enforcement of the Act or because they do not state a cause of action under the Declaratory Judgment Act. If either of these contentions is sound, the defendants have their remedy by motions to dismiss.

(c) The statements of the defendants that, if the requested stay is not granted, they may suffer decrees to be taken against them in these suits and not appeal such decrees, and that, if they do this, and if the Act is thereafter held to be constitutional in the Electric Bond case under a decision which would also be applicable to the plaintiffs in these suits, the decrees against the defendants in these suits could not thereafter be enforced against them. If this latter contention is sound, the defendants obviously need no stay in these actions. If it is not sound, the defendants are in the remarkable position of supporting a request to stay a suit rightfully commenced against them by a threat not to defend it if the stay is not granted.

5. Any relief that the defendants may hereafter be able to show themselves entitled to by way of reasonable extension of their

262 time to answer, or by way of any ordinary postponement of hearings on the bills and answers, or consolidation of causes presenting the same issues, may be granted them when the actual necessity therefor arises.

6. But no litigant is entitled to a stay order which permits him, as one party in a series of lawsuits with many other litigants, to select the adversary, the issues, the state of facts, and the court which he prefers for the litigation, in order that he may, as defendants argued in the lower court, prosecute that one case through the trial and appellate courts to a final decision which will serve as a "valuable precedent" on some of the issues which will ultimately have to be tried in the cases that are stayed. And that is especially true where, as here, the plaintiffs in the cases that are stayed are daily

suffering great and irreparable and increasing damages which will continue all through the long period of the stay, and through the additional long period that must subsequently elapse before their own cases can be tried and finally decided on appeal.

7. In these circumstances we respectfully submit that the issuance of the stay order in this case constitutes a grave abuse of discretion. No precedent justifying such an extraordinary proceeding was presented to the court below, and counsel for petitioner are prepared to show to this Honorable Court, upon the hearing of an appeal where the authorities may properly be cited and reviewed, that no precedent for such a stay exists.

263 Wherefore, the premises considered, petitioner prays for an allowance of a special appeal from the order of Mr. Justice Bailey entered herein on the ninth day of January 1936 and for such other and further relief as to this Honorable Court may seem proper and just.

THE NORTH AMERICAN COMPANY,
By JAMES F. FOGARTY, *Its President*,
Petitioner.

JOHN C. HIGGINS,
48 Wall Street, New York, N. Y.
JOHN S. FLANNERY,
Hibbs Building, Washington, D. C.,
Attorneys for Petitioner.

SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.,
McKENNEY, FLANNERY & CRAIGHILL,
Hibbs Building, Washington, D. C.,
Of Counsel.

264 UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, County of New York, ss:

JAMES F. FOGARTY, being first duly sworn, says: That he is the President of The North American Company, the petitioner in the foregoing petition; that he is duly authorized to make oath to the same; that he has read the foregoing petition and knows the contents thereof and that he verily believes the facts stated therein to be true.

JAMES F. FOGARTY.

Sworn to before me this 15th day of January 1936.

Arthur Mayer,
[NOTARIAL SEAL] ARTHUR MAYER,
Notary Public, Nassau Co., No. 2129.

New York Co. Clerk's No. 1193.
New York Co. Register's No. 7-M-728.
Term Expires March 30, 1937.

265 United States Court of Appeals for the District of Columbia

Original No. 2559

THE NORTH AMERICAN COMPANY, PETITIONER

vs.

JAMES M. LANDIS ET AL., RESPONDENTS

Objections to allowance of special appeal

To the Honorable Chief Justice and the Associate Justices of the United States Court of Appeals for the District of Columbia:

Now come the Respondents and pray that the Petition for allowance of a special appeal from an order of the Supreme Court of the District of Columbia entered therein on the ninth day of January 1936, by Mr. Justice Bailey in the case of The North American Company, Plaintiff, v. James M. Landis et al., Defendants, Equity No. 60136, be dismissed.

Answer to allegations of petition

(The numbering of Articles, paragraphs and subparagraphs corresponds with the numbering in the Petition.)

I

Said Order is not, as in effect alleged, an unqualified "order staying all proceedings in Petitioner's suit 'until the validity of' the Public Utility Holding Company Act of 1935 'has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, *et al.*, now pending in the District Court of the United States
266 for the Southern District of New York, or until that case is otherwise terminated.'" The proceedings were stayed only upon the terms and conditions set forth in the appended opinion of the Supreme Court of the District of Columbia in this cause filed on the sixth day of January 1936. The stay is, by the opinion, expressly "conditioned upon a diligent and active prosecution of the Electric Bond and Share case." Under the terms of the stay and during the period covered thereby, as the opinion clearly states, the Petitioner has a right to an injunction against the Respondents if and whenever Petitioner deems it necessary to avail itself of that right. The trial court found that such interlocutory relief would give the Petitioner "all the protection needed pending a decision by the Supreme Court" in the Bond and Share case "and save great amount of labor, time and expense." The stay granted is interlocutory and remains completely within the control of the trial court to revise or vacate in the event of any possible unanticipated hardship or for any other good cause shown.

II

The Respondents deny that the stay of Petitioner's suit in the court below is now causing Petitioner irreparable damages or that such alleged damages will continue to increase unless and until said stay is vacated. To the contrary, the stay was sought and granted not because of any statutory or technical rule binding upon the court but as a matter of discretion to maintain the orderly course of justice—grounds requiring the court to be satisfied that the stay did not prejudice any legitimate interest of the petitioner. And the court expressly found: "The plaintiffs seek an early decision by the Supreme Court but they could not appeal from a decree of this Court in their favor, and as said before, I cannot see how their real interests will not be protected by the temporary injunction to which the defendants offer to submit."

The Respondents deny that the stay was a grave abuse of discretion which the court below undoubtedly had in the premises. To the contrary, the Respondents assert that the stay was necessary to maintain the orderly course of justice and prevent a grave abuse by the Petitioner of the judicial process of the court below.

267 The Respondents deny that the stay operates practically as an injunction against the assertion of Petitioner's rights during the period specified or that the stay denies to the Petitioner any constitutional, legal, or other right of which a court of equity may properly take cognizance, or that the granting of the appeal is necessary or even compatible with the interest of justice. The stay in no sense operates as an injunction against the Petitioner; it controls only the progress of this particular cause so as to maintain the orderly course of justice. The Petitioner, by electing to bring this Petition for the allowance of a special appeal, has recognized that the order of stay is not in the nature of an injunction from which an ordinary appeal may be taken. If, as counsel for the Petitioner allege in paragraph 33 of Article III of its Petition, the cases in other districts brought by subsidiary holding companies of the Petitioner, and numerous other holding companies are not jurisdictionally defective, then the Petitioner itself is free to assert any and all its rights in other districts, including its domiciliary district. The Petitioner, as distinguished from some of its subsidary companies, is neither resident nor doing business in the District of Columbia.

III

The Respondents deny that all of the facts relating to the granting of the stay by the court below are fully and accurately set forth in Article III of the Petitioner's Petition. For purposes of this Answer, the Respondents do not deny the allegations of paragraphs 1, 2, 3, 5, 6, 8, 11, 12, 13, 14, 15, 16, and 17 of Article III; but they do deny certain of the allegations of the remaining paragraphs as will hereinafter more particularly appear.

4. Respondents admit that the Petitioner alleges the unconstitutionality of the Act as an excuse for its failure to register. Respondents deny that Petitioner will suffer any inevitable and irreparable damage from registering or not registering under the Act. The inconvenient position of a non-registered company has been deliberately chosen by the Petitioner as an alternative to filing a simple notification of registration—all that is presently required of registered companies. Respondents deny that Petitioner's right later to challenge the constitutionality of the Act could possibly be prejudiced by presently filing such notification. Respondents assert that such a contention is frivolous and without color or merit;

268 all four judges who have considered the contention that registration waives or impairs any constitutional right, have rejected it: Judge Way, in Public Utility Investing Corporation v. Utilities Power & Light Corporation, U. S. District Court, E. D. Va., December 17, 1935; Judge Holly in Matter of Public Utilities Securities Corporation, U. S. District Court, N. D. Ill., November 27, 1935; Judge Coleman, in Matter of American States Public Service Company, U. S. District Court, D. Md., November 7, 1935; and Mr. Justice Bailey in the opinion filed January 6, 1935, in the proceedings below.

7. The Respondents deny that the Attorney General is specifically empowered by Section 18 of the Act to enforce its criminal provisions before evidence of violation is transmitted to him by the Securities and Exchange Commission. The Respondents further deny that it is the duty of the Postmaster General, as prescribed by law, to enforce the provisions of the Holding Company Act.

9. The Respondents admit Petitioner's bill invokes the equitable jurisdiction of the court to enjoin the enforcement of the Act as unconstitutional. But the Respondents deny that the bill is sustainable under the principles established by Ex Parte Young, 209 U. S. 123; Pierce v. Society of Sisters, 268 U. S. 510; Euclid v. Ambler Realty Co., 272 U. S. 365; and Terrace v. Thompson, 263 U. S. 197, in each of which specific threats of enforcement were alleged and admitted. Where there are no specific threats, a court of equity has no jurisdiction to give an injunction, Ex Parte La Prade, 289 U. S. 444; Spielman Motor Co. v. Dodge, 295 U. S. 89; and, as the trial court pointed out, under such circumstances, there is no case or controversy against any defendant which warrants the giving of a declaratory judgment. Liberty Warehouse Co. v. Grannis, 273 U. S. 70.

The Respondents aver that whether the Petitioner's bill is ultimately determined to be with or without equity is irrelevant to the granting or denying of the stay. The Respondents did not move to dismiss Petitioner's bill. As the Attorney General stated below (Reply Brief In Support of Motion to Stay Proceedings, 29–30):

"The Government does not feel that for the purposes of this proceeding it must demonstrate beyond doubt that this Court is with-

out equitable jurisdiction to try the plaintiff's bills. The Government has already brought a test suit without jurisdictional difficulties as a vehicle to take the question of the constitutionality of the Act to the Supreme Court—the only purpose for which the plaintiffs want a final decision of this Court. The Government feels, therefore, that it needs only to indicate to this Court that there is
269 sufficient doubt about the Court's equity jurisdiction so that its questionable character can be settled finally only by the United States Supreme Court, and that there is a real possibility that if the Court proceeded to a long and expensive trial on any of these bills the case might ultimately be dismissed by the United States Supreme Court upon jurisdictional ground without any adjudication upon the substantive issues of constitutionality."

10. The Respondents deny each and every allegation of Paragraph 10 of the Petition. To the contrary, the Respondents aver that the Petitioner stands in no danger from any threatened action of any Respondent. The trial court's opinion refers to public disclaimers by the Commission, the Attorney General, and the Postmaster General, disclaiming any intention of prosecuting for any violation of the Act before a decision of the Supreme Court sustaining its constitutionality or thereafter seeking penalties for prior offenses. The Petitioner does not contradict or challenge such disclaimers.

Petitioner's bill does not specifically and concretely allege any threat by the Respondents other than that which springs from the mere existence of provisions of the Act conferring authority upon the Commission and the Attorney General to enforce the Act upon the fulfillment of certain conditions. At the hearing Petitioner relied chiefly upon the threat of eventual dismemberment created by the existence of Section 11 (b) and its concern about the invalidation of contracts made in violation of the Act because of the existence of Section 26 (b). By the terms of the Act Section 11 (b) applies only to a registered holding company (which the Petitioner has chosen not to become), and gives the Commission no power to issue orders thereunder prior to January 1, 1938. Nor can a violation of any order under Section 11 (b) be the basis of any criminal prosecution (see Sec. 29). Section 26 (b) merely declares the common law rule of illegality which no Respondent has any color of authority, or has threatened, to enforce.

The temporary injunction offered with the stay protects the Petitioner as fully as the power of the court below can protect the Petitioner from any act or authority to act of any of the Respondents.

18. Respondents admit that the motion for a stay was signed by the Attorney General and by the General Counsel for the Commission without supporting affidavits. The Petitioner raised no objection in the court below to the presentation of the pertinent facts by the Attorney General without the submission of sworn affida-
270 vits. Counsel for Petitioner in paragraph 26 calls attention to

his own unsworn statements in the court below. Respondents aver that the printed documents appended hereto entitled Argument in Support of Motion to Stay Proceedings, Reply Brief in Support of Motion to Stay Proceedings, and Appendix to Reply Brief in Support of Motion to Stay Proceedings, were submitted to the court below over the signature of the Attorney General and include the statements of facts made to the court below by the Attorney General. These documents are appended together with an affidavit of the Attorney General attesting the truth of the statements of facts therein.

19. The Petitioner unfairly and inaccurately states the facts as to the proposed trial and determination of the Electric Bond and Share suits. The Respondents themselves suggested that the trial court reserve full right to withdraw the stay if the Government does not prosecute the Bond and Share suits vigorously and promptly. The Respondents represented to the court below that the Government had already done extensive work on the Bond and Share suits, that the answer of the defendants in such suits was at that time expected within a few weeks, that the Government was cooperating with counsel for such defendants to stipulate a large portion of the facts for the trial. The Attorney General expressly stated to the court below:

"If the Government is not hampered by a number of other actions, the Electric Bond & Share case will come to the Supreme Court for a decision on the substantive merits before any suit involving jurisdictional questions can reach that Court. The stay requested will, therefore, make relatively simple the task of all concerned—this Court, the holding companies, and the Government—and the saving not only to the taxpayers of the country but to the stockholders of the plaintiff holding companies should be really substantial." (Argument On Motion to Stay Proceedings, 24.)

The Petitioner made no effort to, and could not, show that a trial of its suit would be more expeditious than that of the Bond and Share suits.

20. The Petitioner in paragraph 20 of its petition does not fairly represent the position of the Government as to the time required to try the Bond and Share suits. The Attorney General did state that the Bond and Share trial might take several months. But he also indicated that the preparation for trial of any suit with any major holding company would take months and that the trial itself would require several additional months. By the time of the proceeding in the trial court the Government was already well into the preparation of the Bond and Share suits. The Government had been
271 unable to make preparation to meet the Petitioner's suit.

21. Paragraph 21 of the Petitioner's Petition states only the bare reasons for the stay urged in the Government's motion; it does not give a fair impression of the careful and thorough explanation of the reasons for the stay given in person and in his briefs by the Attorney General.

22. The Respondents deny each and every allegation of paragraph 22 of the Petitioner's Petition. The Government undertook to demonstrate to the trial court that if, as the Petitioner had alleged in its bill, the provisions of the Act was inseparable, the decision in the Bond and Share suits would necessarily dispose of the issues raised in the Petitioner's bill. But the Respondents went further. As the Attorney General in his Reply Brief stated (13–15):

"On the theory of the plaintiff's own pleadings, therefore, the Bond & Share cases will raise and settle all the fundamental constitutional questions which can be raised and settled in the suits now before this Court. On this point, as on many other points in this proceeding, the plaintiffs have tried to blow both hot and cold. For the purpose of offering an excuse to this Court of equity for bringing suit before complying with simple registration provisions, they have pleaded that the registration provisions are not separable from other provisions of the Act. For the purpose of trying to show a substantial difference between the scope of the issues which can be raised in their cases and the Bond & Share suits, they have argued that the provisions of the Act are separable, that the Act may be constitutional as applied to the Bond & Share companies and unconstitutional as applied to the plaintiffs, and that the Bond & Share suits will not put in issue section 11 and the other sections of which they complain. Whether the Bond & Share suits ultimately are decided in favor of or against the Government, there can be no question that they will decide whether the registration provisions are valid, whether or not separable from the other provisions of the Act, and to what extent the validity or invalidity of any other provisions of the Act may operate as a valid defense for failure to register. Such a decision alone will be enormously helpful in clarifying and defining the proper issues in suits before this Court. Such a decision alone would justify this stay as promoting the orderly processes of the court. The inconsistent positions of counsel in this very case illustrate the fundamental confusion that only such a decision can resolve.

"If, therefore, the court in the Bond & Share suits decides that the provisions of the Act are inseparable, every possible issue of constitutionality under the Act can, and undoubtedly will, be raised. If, on the other hand, the court in the Bond & Share cases decides that the provisions of the Act are separable, such a decision will enormously reduce the issues of law and precisely define the facts relevant to those issues in the cases before this Court, as well as settle issues specifically relevant to such cases as described in the next point in this brief."

272 23. The Respondents deny that the Petitioner has shown that the allegations of the Commission's bill in the Bond and Share companies differ essentially from the Petitioner.

There is appended hereto a copy of the Commission's bill against the Bond and Share Company and twenty-one subsidiary holding companies, and a copy of a proposed answer of the Bond and Share

Companies which has been handed to the Government to facilitate and expedite preparation for trial. Such Answer includes a cross-bill substantially equivalent to the Bill filed in the court below by the Petitioner in this proceeding. There is also appended hereto a copy of a stipulation by which the Attorney General, the Postmaster General, and the members of the Securities and Exchange Commission, the defendants in the bill involved in this proceeding, are to be made cross-defendants to the cross-bill in the Bond and Share suits. All the issues raised by the Petitioner in its bill filed in the court below are therefore bound to be raised and determined in the Bond and Share suits.

24. The Respondents do not deny that the Bond and Share suits may be held to involve only the question of the constitutionality of Section 4 of the Act. But such a restrictive holding, affirmed by the Supreme Court of the United States, will similarly limit and determine the scope of the Petitioner's suit. For the same issues are raised by the Bond and Share cross-bill as by the Petitioner's bill. And such a holding if made will be a ruling of the Supreme Court of the United States that Section 4 is separable and that, as the Respondents have always contended, other sections of the Act applicable by their terms only to "registered holding companies", may not be attacked, nor raised by way of defense, except by a company which has already registered under Section 4.

25. The Respondents emphatically deny Petitioner's allegation that they have not attempted to show that the question of the constitutionality of the Act may well be held to be involved in a much broader and more comprehensive way under the issues presented by Petitioner's bill than those presented by the Bond and Share suits. The Respondents have always contended and specifically urged in the court below that "no fairer or broader test of the Act could be suggested" than the Bond and Share suits, that the Bond and Share system "comes in contact with the Act at more points than any
273 other holding company system" and that the Petitioner's suit is beset with jurisdictional difficulties.

26. The court below found:

"The offer of the plaintiffs to a trial of one or two of the instant cases and suspending proceedings in the others has not been consented to by the defendants. They, however, cannot answer for the fifty odd cases now pending in other courts, which, it seems probably will be transferred to this Court. I think that the plan proposed by the defendants would give all the plaintiffs all the protection needed pending a decision by the Supreme Court and save great amount of labor, time, and expense."

It is a novel suggestion that those who violate a statute on the grounds of its alleged unconstitutionality should have the right to dictate to the Government against which violator the Government should proceed for the purpose of testing the constitutionality of the Act. The Petitioner was offered an injunction which would

fully protect the Petitioner's alleged rights so far as the protection sought lay within the power of the court below. A litigant who secures from a lower court the relief he has prayed has no right to seek review by a higher court. Dieterich v. Dieterich, 48 App. D. C. 356.

27. Respondents deny that Petitioner in either paragraph 10 or paragraph 27 of its Petition has shown that a temporary injunction would be less effective than a permanent injunction to protect the Petitioner against the Respondents. What Petitioner seeks is not relief from this Court or the court below against the Respondents, but the right to force its own case or some other case of its choosing to be carried to the Supreme Court of the United States for the purpose of testing the constitutionality of the Act in general. But the Petitioner, having been offered and having refused the only protection the court below could afford, has no right, constitutional or otherwise, to an adjudication of its alleged claims by the Supreme Court. Due process even in a criminal case does not involve a right to an appeal, McKane v. Durston, 153 U. S. 684, 687; Andrews v. Schwartz, 156 U. S. 272, 275, and no one has a right to appeal from a decree in his favor for the purpose of having his future rights declared by a higher court. Dieterich v. Dieterich, supra.

28. The Respondents did urge in their briefs and on the oral argument that in their judgment the Petitioner's bill did not state a cause of action for an injunction or declaratory judgment. But the Government did not move to dismiss the bills on these grounds because it did not wish to admit the allegations of the bill even for procedural purposes. The Supreme Court has recently
274 indicated its reluctance to consider issues of constitutionality in a demurrer. Borden's Farm Products Co. v. Baldwin, 293 U. S. 194. The Government merely pointed out, as has already been indicated in Respondent's answer to paragraph 9 of Article III of the Petitioner's Petition, how grave and serious were the questions of equitable jurisdiction involved in the Petitioner's bill and how very real was the possibility that, after a long and protracted trial and successive appeals, the bill might be dismissed upon grounds of equitable jurisdiction without any consideration of the constitutional issues involved.

29. The position of the Government as stated in the argument before the court below involved no improper threat. What the Attorney General said was just this (Argument on Motion to Stay Proceedings, 24–25):

"As chief law officer of the Government, I conceive it to be my duty to exercise such powers as I possess over the course of Government litigation and appeals, to ensure that an important and far-reaching enactment of the Congress is tested fairly and expeditiously. The determination in the suit selected for the testing of this Act may not determine the validity of the Act in its application

to a few companies specially circumstanced, but it will determine the fundamental constitutional question involved and as many aspects of the Act as could possibly be determined in any one case with relation to a typical holding company. Because this is true, I have not felt it improper to suggest to the Court that I would feel justified in permitting injunctions issued in other cases by a court of first instance to go unappealed, if need be, in order that a record might be made up for the Supreme Court in the one case which will befit the great constitutional issues involved.

"Likewise, I feel warranted in suggesting that the efforts of the Government so to conduct litigation in the public interest should be recognized by staying proceedings which ultimately will be unnecessary, certainly in part and probably altogether. The granting of a stay and, if desired, a temporary injunction will enable the Court readily to adapt its decrees to the views of the Supreme Court, and will protect every legitimate interest, public and private. The Government might be content, like a private litigant, to exercise all its procedural privileges without explanation. I have, however, discussed these matters and have submitted them for the approval of this Court, because the policy I have indicated is designed not to seize technical advantages for their own sake but to serve substantial interests of the public and its Government with common sense and fairness, and to aid in the orderly disposition of the public business."

30. The announcements of the Respondents disclaiming any intention of bringing prosecutions under the Act until the adjudication of the constitutionality of the Act by the Supreme Court are fairly set forth in the opinion of the trial court.

31. The facts on which the court below granted the stay requested by the Respondents are given in the opinion of the court.

32–33. The trial court correctly stated the apparent attitude of counsel for the Petitioner and the other plaintiffs in regard to the jurisdiction of courts outside of the District of Columbia over suits to restrain the enforcement of the Act. In his Reply Brief the Attorney General stated (36–37):

275 "When the Attorney General told this Court that, in his judgment virtually all of the suits brought by the holding companies outside of the District of Columbia were clearly defective because of want of proper venue and because of the absence of power in the District Courts to issue a process for valid service outside of their respective districts, none of the counsel for the plaintiffs chose to dispute the opinions of the Attorney General. Rather, the impression was given that the correctness of the Attorney General's opinion was not denied."

After the Reply Brief of the Attorney General was filed, counsel for the Petitioner requested permission to file and filed a Rebuttal Brief, which in no way attempted to correct the impression left upon Respondents' counsel and upon the court below. Indeed there can be no question that the attempted service of process issued by courts outside of the District of Columbia upon the members of the Commission, the Attorney General and the Postmaster General, does not constitute valid service, Toland v. Sprague, 12 Pet. 300, 330; Hark-

ness v. Hyde, 98 U. S. 476, 488; Robertson v. Railroad Labor Board, 268 U. S. 619, 622. A decree against local federal officers, if granted, would not bind the Commission, the Attorney General or the Postmaster General, and would be futile and ineffective to prevent the subsequent enforcement of the Act by either the Commission or the Attorney General.

IV

The Respondents deny that the action of the court below constitutes a gross abuse of any discretion it may have had in the premises" and aver that the granting of the stay was not only justified but necessary to maintain the orderly processes of justice.

1. Sliosberg v. New York Life Insurance Co., 244 N. Y. 482, has no application to the instant proceeding. That case involved a statutory stay of a legal cause of action and bore no relation to a stay granted by a court of equity to maintain its own orderly processes of justice, particularly when such stay is accompanied by an offer of a temporary injunction according to the plaintiff during the period of the stay as much relief as he could obtain by a final decree. The nature of the Petitioner's suit is such that the delay cannot prejudice its case. There is no risk of the loss of evidence or witnesses. The delay will save the Petitioner and its shareholders the cost of an unnecessarily long and protracted trial.

2. There is no rigid rule of law such as Petitioner's counsel assumes that a court of equity may not, in order to maintain the orderly processes of justice, stay its own proceedings until the disposition of some other proceeding, unless the parties and the issues in the
276 two proceedings are identical. Such identity is not required even where equity is asked to extend its affirmative aid in enjoining the prosecution or continuance of proceedings in other courts. "Avoidance of the burden of numerous suits at law between the same or different parties, where the issues are substantially the same, is a recognized ground for equitable relief in the federal courts", Di Giovanni v. Camden Fire Ins. Assn., 296 U. S. 64, 70, decided November 11, 1935. A rule which does not rigidly prevail even where affirmative relief is asked, cannot apply to a "mere stay of proceedings." Enelow v. N. Y. Life Insurance Co., 293 U. S. 379, 381.

3. The trial court in a carefully prepared opinion has concluded that the stay as allowed was necessary to maintain the orderly processes of justice, and would afford the Petitioner "all the protection needed pending a decision by the Supreme Court and save a great amount of labor, time, and expense." Its action contravened no rule of law or of equity and constituted a fair and judicious exercise of its discretion. Petitioner's extravagant charge that the action of the trial court constituted "a flagrant abuse" of discretion is wholly unsupported and unsupportable by any specific allegations of its Petition or by anything in the proceedings below.

(a) The Respondents in a full and elaborate argument convinced the trial court that the suits brought by the Government against the Bond and Share Companies in their domiciliary jurisdiction in the Southern District of New York were entitled to preference, that such proceedings would be tried promptly, and that they would be tried before the proceedings in this Court, for which the Government was not prepared, could be tried.

(b) The Respondents aver that the stayed suits are no more or less substantially identical with one another than with the Bond and Share suits and that the Bond and Share suits are free of many jurisdictional questions which complicate the stayed suits.

Respondents do not deny that the suits stayed involve substantially similar issues. But counsel for Petitioner in the court below did not urge but denied that the suits stayed were substantially identical. He contended in particular that the American Water Works Company case presented an "absolutely unique" state of facts. He accordingly urged that both cases in which he was counsel, i. e., The North American and American Water Works cases, should be tried, possibly as a consolidated suit.

(c) It is misleading for the Petitioner to allege that the court below which granted the stay cannot control the Bond and
277 Share suits. The court below may withdraw the stay whenever it deems it necessary or proper; and the stay is expressly conditioned upon a diligent and active prosecution of the Bond and Share suits.

(d) A comparative examination of the pleadings will demonstrate that there is not the slightest basis for Petitioner's assertion that the suits stayed will even "probably" be broader or more comprehensive than those in the Bond and Share suits (See Respondents' answer to paragraphs 22 and 23 of Article III of the Petitioner's Petition).

(e) As the trial court found, neither the Petitioner nor any of the other parties stayed could show that they would suffer any irreparable injury from the stay. The practical proof of that absence of injury is that such parties have not even chosen to avail themselves of the temporary injunction offered to them which provides them as full protection as could be provided by any permanent decree of the court below.

(f) The so-called offer made by the parties stayed to select for trial a few of the entire number of suits brought by the holding company interests indicates clearly that the Petitioner's suit and other suits have been brought not to protect alleged constitutional rights but to force the Government to bring to the Supreme Court for adjudication such test suits as the dominant holding company interests may dictate.

4. (a) The Petitioner does not deny that suits brought in other jurisdictions may be recommenced in this District if the stay granted were vacated.

(b) The Petitioner complains that the Respondents have not moved to dismiss the Petitioner's bill for jurisdictional defects. The reasons which prompted the Respondents not to move to dismiss have already been explained in Respondents' answers to paragraphs 8 and 28 of Article III of the Petitioner's Petition. The Petitioner has not been so rash as to assert to this Court, as it asserted to the court below, that its bill was free from any jurisdictional difficulty.

(c) The position taken by the Attorney General in the court below is fully set forth in the answer to paragraph 29 of Article III of the Petitioner's Petition.

5. The Petitioner does not deny that unless the proceedings below were stayed, the Respondents would be entitled to extensive continuance and postponements to enable them properly to prepare their defense. The Petitioner has not, and could not, deny that such
278 continuances would not delay the final adjudication of its rights far beyond the time when the Bond and Share suits would be disposed of.

6. The Respondents urged before the court below and urge here that an examination of the pleadings in the Bond and Share suits and in the suits stayed will show that both sets of suits involve substantially identical issues of law and of fact. In representing to this Court that the Respondents urge merely that the Bond and Share suits would serve as a "'valuable precedent' on some of the issues which will ultimately have to be tried in the cases that are stayed", the Petitioner has not fairly stated Respondents' position. What the Attorney General stated in his Reply Brief (page 24) was:

"The factual situations in the plaintiffs' suits and in the Bond & Share suits are, therefore, sufficiently similar to raise substantially the same questions of law, and to make the trial of the facts in the Bond & Share suits a valuable precedent for the treatment of facts when and if cases now before other courts come up for trial."

The Respondents' position is even more specifically explained in their answer to the allegations of paragraphs 22 and 23 of Article III of the Petitioner's Petition.

7. The Petitioner has not ventured squarely to question the power of the court below to grant the stay. The authorities were exhaustively briefed for that court, and Petitioner did not cite any authoritative precedent for denying the stay. That the discretion of the trial court was fairly and judiciously exercised is apparent from a reading of its opinion.

Wherefore, the Respondents pray that the Petition for an allowance of a special appeal from the order of Mr. Justice Bailey entered herein on the ninth day of January 1936 be dismissed.

HOMER CUMMINGS,
Attorney General of the United States.

JOHN J. BURNS,
General Counsel,
Securities and Exchange Commission.

279 UNITED STATES OF AMERICA, *District of Columbia, ss:*

HOMER CUMMINGS, being first duly sworn, on oath deposes and says that he is Attorney General of the United States and one of the attorneys for the Respondents; that he is informed and believes, and therefore avers that the facts set forth in the Objections to Allowance of Special Appeal are true.

HOMER CUMMINGS.

Subscribed and sworn to before me this 27th day of January 1936.

[SEAL] UGO J. A. CARUSI,
Notary Public.

281 Wednesday, April 8th, A. D. 1936

* * * * * * *

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL.

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL.

The argument in the above entitled causes was commenced by Mr. John C. Higgins, attorney for appellants, and was continued by Mr. Homer Cummings, Attorney General of the United States, for appellees, and was continued by Mr. Robert H. Jackson, attorney for appellees, and was concluded by Mr. John C. Higgins, attorney for appellants. On motion, appellants allowed to file reply brief, and appellees allowed to file additional memorandum. (Mr. Justice Robb not sitting.)

282 United States Court of Appeals for the District of Columbia

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

v.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL., APPELLEES

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT,

v.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL., APPELLEES

Appeals from the Supreme Court of the District of Columbia

Decided June 22, 1936

F. D. McKenney, John S. Flannery, G. Bowdoin Craighill, and John E. Larson, all of Washington, D. C., and John C. Higgins, of New York City, for Appellants.

Homer S. Cummings, Robert H. Jackson, Benjamin V. Cohen, and Robert E. Kline, Jr., all of Washington, D. C., for Appellees.

Before MARTIN, Chief Justice, and VAN ORSDEL, GRONER, and STEPHENS, Associate Justices

VAN ORSDEL, Associate Justice. This is a special appeal from an interlocutory order of the Supreme Court of the District of Columbia staying further proceedings in plaintiffs' suits against the appellees, defendants below. The order staying further proceedings in these suits was passed to await final determination by the Supreme Court of the United States in the case of the Securities and Exchange Commission v. Electric Bond and Share Company et al., now pending in the District Court of the United States for the Southern District of New York, or until such time as the case is otherwise terminated.

These suits are for injunctions to restrain the defendants, on the ground of unconstitutionality, from enforcing the provisions of an Act of Congress approved August 26, 1935, Public, No. 333, 74th Cong., 1st Sess., entitled, "An Act to provide for control and regulation of public-utility holding companies, and for other purposes." The plaintiffs are holding companies of the class which is required by the Act to register with the Securities and Exchange Commission not later than December 1, 1935. Plaintiffs have not registered, and in their bills declare their intention not to register.

283 The North American Company filed its bill on November 26, 1935, and the American Water Works and Electric Company, Incorporated, filed its bill the next day. The bills invoke the equitable jurisdiction of the court because of irreparable injury which it is averred the Act is already causing plaintiffs, and which plaintiffs will continue to suffer in ever increasing measure until final relief is afforded. The bills set forth fully the basis of the court's jurisdiction, the nature and character of plaintiffs' business, the provisions of the Act applicable to the plaintiffs, the grounds for plain-

tiffs' belief that defendants intend to enforce the Act against them, the reasons why plaintiffs are irreparably damaged through the threatened enforcement against them by defendants of the provisions of the Act, that this damage will be sustained whether plaintiffs register under the Act or not, and the reasons why, in the judgment of the plaintiffs, the Act is unconstitutional.

Simultaneously with the filing of the bills in the plaintiffs' cases, the Securities and Exchange Commission, hereinafter referred to as the Commission, filed a bill against the Electric Bond and Share Company and five of its corporate subsidiaries in the United States District Court for the Southern District of New York. That case will be hereinafter referred to as the Bond & Share case. At approximately the same time that plaintiffs filed their bills, some 48 other bills were filed in the various United States District Courts by other companies seeking substantially the same relief as that sought by the plaintiffs, and at about the same time, and prior to December 1, 1935, five other holding companies filed bills in the Supreme Court of the District of Columbia, seeking substantially the same relief sought by the plaintiffs.

On December 7, 1935, before any answer had been filed by the defendants herein, or by the defendants in any of the above-mentioned suits in the Federal District Court, or by the defendants in the Bond & Share case, the defendants herein moved for a stay of proceedings to await the final determination of the Bond & Share case. The grounds advanced in support of the motion for the stay were the pendency of the above-mentioned 48 suits in the federal courts; that the Commission had instituted the Bond & Share case for the purpose of determining the constitutionality of the Act, and that it would be prosecuted with all due diligence to the Supreme Court; that the other pending suits would "tend to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim."

On hearing, the court sustained the motion in the following order:

"This cause coming on to be heard upon motion of the defendants to stay further proceedings herein filed December 7, 1935, the Court having considered the pleadings and the arguments of counsel, and briefs having been submitted herein, it is this 9th day of January 1936:

"Ordered, adjudged, and decreed, that further proceedings herein be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court in this cause filed herein the 6th day of January 1936."

In the course of his opinion the court called attention to the grounds upon which plaintiffs opposed the motion for the stay, to the tender of the defendants to submit to a temporary injunction
284 pending a decision by the Supreme Court in the Bond & Share case, and to the contention of plaintiffs "that many of the

questions as to the constitutionality of the Act involved in these cases are not involved in the Electric Bond and Share case, and that even if the defendants were temporarily enjoined the plaintiffs would in the meantime suffer irreparable injury by the existence of this act upon the statute books, which would affect the validity of their contracts, their transfer of stocks, and other similar matters."

The court then said:

"In the instant case the relief sought by the plaintiffs is first a relief by injunction against the defendants, and second a declaratory judgment to the effect that the Public Utility Holding Company Act violates the Constitution of the United States and that the Act and each and every part thereof is invalid, null, and void. * * *

"'* * * Courts do not declare statutes constitutional or unconstitutional as such. The judicial function is to determine whether or not under the facts proven at the trial, the application of the legislative enactment to the litigant before the Court invades his constitutional rights.'"

We think, from an examination of the bills in the present cases and the bill in the Bond & Share case, which appears in the record, that many questions arise in the instant cases which would not and could not be disposed of in the Bond & Share case. The sole question, therefore, for our consideration is whether or not the court below was justified in granting the stay in these cases; whether or not in so doing the court abused its discretionary power in the control of its docket.

Unquestionably a court has wide discretionary power in the matter of the order in which cases pending on its docket shall be tried, provided always that undue delay is not occasioned, to the damage of litigants. This power extends to the determination of which of two cases, pending in the same court or in courts of similar jurisdiction and involving the same issues and the same parties, shall be first heard, but this situation does not obtain in the present controversy. These cases are pending in courts of different jurisdictions, the parties are not the same, the issues involved are not such that the determination of one case would constitute a full determination of the others, nor are there present any of the conditions which would justify depriving plaintiffs of their day in court and an opportunity to be heard. Their bills have been filed, and without even an answer on the part of the defendants, or the bringing of the cases to issue, which might tend to clarify the issues involved, plaintiffs have been deprived, by an order of the court, of their day in court and an opportunity to be heard. They have been stopped in limine and denied the privilege of proceeding further for an indefinite period of time, subject to all the uncertainties surrounding the final determination of the Bond & Share case.

The stay cannot be justified on the ground that the decision in the Bond & Share case may "simplify" the issues or furnish a "valuable

precedent" for the determination of the present cases. Indeed, from a comparison of the bill in the Bond & Share case with the bills in the instant cases, it is difficult to conclude that a decision of the Bond & Share case would dispose of all the issues in the present cases. In Rosenberg v. Slotchin, 181 App. Div. 137, 138, 168 N. Y. S. 101, 102, the rule is stated as follows:

285 "It is only where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both actions that a case for a stay is presented. (Dolbeer v. Stout, 139 N. Y. 486, 489; Ogden v. Pioneer Iron Works, 91 App. Div. [N. Y.] 394, 396; Consolidated Fruit Jar Company v. Wisner, 38 id. 369, 375.)"

The Rosenberg Case is also authority for the rule that under no circumstances will a stay in an action be granted until the issues are made.

It is urged that the issues of law in plaintiffs' cases will be greatly simplified by the determination of the Bond & Share case. "Such a conflict, if it exists, is no valid ground for the staying of the plaintiff's proceedings, nor is there any warrant for such a stay to be found in the uncertainty of the law on any question, however unsettled the law and conflicting the decisions." Jenkins v. Baker, 91 App. Div. (N. Y.) 400, 402, 86 N. Y. S. 958, 959.

Where it appears that a party whose suit is sought to be tried has no remedy against his adversary except in the court in which he has brought his action, the opposing party, not having answered or brought the case to issue, is in a poor position to plead for delay. Nor is the plea of the Department of Justice in the present case that it is not equipped to handle the numerous cases which have arisen, because it is involved in other litigation, a valid ground for a blanket stay in limine of all further proceedings in the present cases for an indefinite and protracted period.

The government of the United States as a litigant has no greater rights than the humblest citizen. While we recognize the difficulty which confronts the Department of Justice in conducting the vast amount of litigation in which the various agencies of the government have become involved, as well as the duty of the courts to be indulgent where possible in the public interest, yet the rights of the citizen are not to be overlooked. He is entitled to be heard in the courts in defense of his rights if he honestly believe that they have been invaded to his damage, even by an agency of the government. These rights may not be disregarded, to the damage of the litigant, because of any question of mere governmental convenience or public interest, and the discretion of the court should not be swayed by any of these considerations so as to deprive the litigant of his day in court and a prompt and speedy trial.

While it is true that a court of equity has wide discretion, in the public interest, in the exercise of its jurisdiction, yet it may not stay its hand because of such interest if by so doing private rights will

suffer. Pennsylvania v. Williams, 294 U. S. 176, 185. That the rights of the plaintiffs in the present cases would suffer by reason of the stay granted, is apparent, since the very existence of the Act, whether they register under it or not, must of necessity affect materially the conduct of their business during the pendency of these suits.

The order is reversed.

Separate Opinion of Judge GRONER

GRONER, Judge: Very shortly after this suit was begun, the Attorney General filed in the trial court a motion to stay proceedings. In the motion he said that there had been filed in ten District
286 courts of the United States at least forty-eight bills of complaint in behalf of 147 plaintiffs, all of which similarly sought to enjoin the enforcement of the Act of Congress approved Aug. 26, 1935, known as the "Public Utility Holding Co. Act of 1935." The Attorney General informed the court that he was anxious to secure an early determination of the constitutionality of the Act and to that end he had had the Commission institute a suit in the Southern District of New York against Electric Bond and Share Company and that the suit would be prosecuted with due diligence to secure from the Supreme Court an authoritative determination of the validity of the Act. On the ground that the pending suits would clog the courts and overtax the facilities of the government and militate against an orderly disposition of the controversy, he asked the court to stay proceedings in the instant case. The Attorney General offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case. The court, after hearing, entered an order staying all proceedings pending a decision by the Supreme Court, on condition that the Bond and Share case be diligently prosecuted.

On this appeal the question for our decision is whether the lower court had the right and power to enter the order—and if it had the power, whether the entry of the order in the form in which it appears was an abuse of discretion.

Undoubtedly a Federal District Court may grant a stay in a cause pending before it and may enter such other orders as may be necessary to control the progress of the cause in the interest of justice. Ordinarily such orders are within the sound discretion of the court. A stay of proceedings is sometimes granted for the accommodation of counsel, sometimes because of the absence of witnesses, sometimes because of illness on the part of counsel or witnesses, sometimes to avoid a multiplicity of suits, sometimes to avoid a conflict of jurisdictions, and perhaps for other grounds which do not occur to me at the moment—all of which show that the right exists. But in every instance that I know of in which a stay has been asked and opposed, the right—where it has been exercised—has been exercised with caution and with the assurance on the part of the court that the rights

of the plaintiff will not suffer by the delay. Any other course would be obstructive of justice.

Here the learned judge of the lower court points out that the defendants have offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case; and this, he says, will afford just as full relief as a decision in this suit holding the challenged Act of Congress unconstitutional. If, from an examination of the record, I could say that the court's conclusion in this respect were correct, it would be difficult to find any reason for disturbing the order; but I think the conclusion is not sustainable. As is stated by Judge Van Orsdel, there is a marked difference between many of the issues in this case and in the Bond and Share case due primarily to a different corporate set-up; and careful examination of the Act and of the purposes of the two suits shows that even though the Act of Congress may be constitutional as to the Bond and Share Company, it may be unconstitutional
287 as to these plaintiffs. In short, that a decision in the one case will not foreclose all questions in the other. Nor is there doubt that the provisions of the Act, even if they ultimately be held unconstitutional, seriously affect the business and affairs of these plaintiffs pending the determination of that question. In that view they are clearly entitled to a speedy trial.—"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, at p. 163. But I mention these matters merely in passing. In my opinion the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion. It is substantially an injunction against these plaintiffs, preventing them for an indefinite period from litigating a question of legal rights which they insist the Act of Congress unlawfully impairs. If, instead, the stay had been temporary, if the court had announced that it would not set the case for trial except at the reasonable convenience of the parties, I would think its action well within its discretion. But here we are confronted with an order restraining litigants from prosecuting their case, grounded upon the theory that, because it would seriously inconvenience the Attorney General to try a number of cases at one time, a selection may be made and the others suspended, not temporarily, for that in the circumstances would have been reasonable and proper, but indefinitely—even where the parties are different and the rights and interests not identical.

In addition to all of this, the motion was made without bringing the case to issue. No answer or pleading of any kind in defense have been filed. The order was entered at the very threshold of the court. In any case, this is premature. The trial court should require defendants to bring the case to issue and then—if the circumstances are such as indicate that no harm will be done in a reasonable postponement of the trial—it may very well be that the court, in the

exercise of its discretion, can delay the trial temporarily.—In other words, take such action in relation to the progress of the cause on its own docket as may then seem to it equitable and fair. But the present order goes beyond that limit and in that respect was improvidently entered.

STEPHENS, Associate Justice, dissenting.

I am unable to agree that the trial court abused its discretion. The facts, as I understand them, are these: The appellants (plaintiffs below, and hereinafter called plaintiffs), the North American Company and the American Water Works and Electric Company,[2] public utility holding companies, each filed a suit in the Supreme Court of the District of Columbia seeking to enjoin enforcement of Title I of the Public Utility Act of 1935 (hereinafter referred to as the "Act"), alleging threats of enforcement by the appellees (defendants below, and hereinafter called defendants), the members of the Securities and Exchange Commission, the Attorney General, and the Postmaster General; and the plaintiffs sought a declaratory judgment that the Act, in all of its parts, was unconstitutional.

They had refused to register under the Act, thereby subjecting
288 themselves, so they asserted, to grevious prohibitions against, and penalties upon, divers of their business activities. But they said also that if they did register, they would become subject to regulation, control, and reorganization, pending ultimate dismemberment and destruction under Section 11, the so-called death sentence provision, of the Act. They asserted further that the existence of the Act clouded title to their investments, interfered with their freedom of contract, and injured their credit—all to their irreparable damage. Five other similar suits had been filed by holding companies against the same defendants in the Supreme Court of the District of Columbia. In ten or more other Federal courts in various parts of the United States, forty-nine additional similar suits had been filed against agents of the Securities and Exchange Commission, United States District Attorneys, representatives of the Post Office Department, and the defendants in the instant cases. But for lack of personal service upon the latter, it was not unlikely that these suits, or many of them, would be brought to a conclusion by either dismissal or default, and that in their stead new suits would be filed in the Supreme Court of the District of Columbia. On or about the same date that the plaintiffs' suits were filed, the Securities and Exchange Commission commenced, in the United States District Court for the Southern District of New York, a suit against the Electric Bond and Share Company and five of its principal subsidiaries; and there were later by supplemental bill of complaint brought into that suit sixteen more members of the Electric Bond and Share Company system. The New York suit was brought under Section 18 (f) and

[2] The full names of the companies are "The North American Company" and "American Water Works and Electric Company, Incorporated."

Section 18 (g) of the Act to compel the defendants to register and to restrain them from activities prohibited in the absence of registration. It was a test case comprehensive in nature.

In these circumstances, the defendants in the instant case moved to stay all the proceedings relating to the validity of the Act until its validity had been determined by the Supreme Court of the United States in the New York suit, or until that case otherwise terminated. This motion was supported by oral and documentary representations which, for the purposes of this appeal, were by stipulation embodied in an affidavit and exhibits made a part thereof (including the bill of complaint and the amended and supplemental bill of complaint in the New York suit). In substance these representations were that: There would be a substantial identity of issues in the local suits and in the New York suit; all of the suits were complex; the local suits would require extensive investigations of fact at great expense in both funds and time before answers could be formulated and filed; the preparation and trial at the same time of the local suits and the New York suit would overburden the Commission and its counsel; the trial of the local suits would overburden the Supreme Court of the District of Columbia. In moving for the stay the defendants offered the following terms: They would not enforce the Act as against the plaintiffs until it had been determined to be constitutional by the United States Supreme Court in the New York suit, and then only in respect of acts or omissions thereafter occurring; and they would submit to a temporary injunction against enforcement of the Act.

The motion for a stay was resisted by the plaintiffs upon the grounds, in substance, that: The issues in the local suits and
289 in the New York suit would not be the same; even if the defendants were subjected to an injunction, still the existence of the Act would injure the plaintiffs' business in the manner asserted in their bills of complaint. To the latter ground the defendants rejoined that no more prompt determination of the constitutionality of the Act was probable in the local suits than in the New York suit.[3]

The problem thus presented to the trial court by the motion to stay and the plaintiffs' opposition thereto was administrative in nature, not substantive, that is to say, it was one which a court decides according to its discretion, rather than under a rule. Where a court acts by rule, it can decide but one way without error. But where its decision is according to discretion, it may decide in either of two (and sometimes more) ways without disturbance of its ruling on appeal—provided its decision is actuated by proper and adequate representa-

[3] The defendants further rejoined that they had made widespread public announcement that the Act would not be enforced until the determination of its constitutionality by the United States Supreme Court in a test case, and had instructed the agents of the Commission, District Attorneys, and postmasters throughout the United States to such effect; and that in these circumstances, or if the temporary injunction were imposed, the plaintiffs could present no case or controversy for determination of the constitutionality of the Act in respect of its mere existence.

tions or data, and is not unreasonable in respect of the rights concerned.

Were the representations and data before the trial court proper and adequate? The points especially urged in support of the motion to stay were the complexity and burdensomeness of the local and the New York suits, and the substantial identity of issues therein. As to the former: The contents of the affidavit of the Attorney General and of the bills of complaint in the several causes were, we think, sufficient to inform the court of the nature of the suits and to warrant it in concluding that they would be complex and burdensome in respect not only of the requisite preparation but in respect also of the time required for trial. Indeed, there was no substantial dispute on this topic except that the plaintiffs offered to reduce the local litigation to a few test cases. But the court was not bound to conclude from the representations on this subject that this was within the power of the plaintiffs. As to the substantial identity of the issues: In the technical sense the pleadings were not closed, that is to say, at the time the motion to stay was presented to the trial court, no answers had been filed in either the local suits or in the suit in New York. But it is to be borne in mind that the stay was not asked for upon the ground that a decision in the New York suit would, in the technical sense, be res judicata as to the local suits. This it could not be, for lack of technical identity of parties. The proposition advanced was that the rulings in the New York suit would be practically fruitful to simplify, if not to dispose of, the local litigation. In this view, I think formal answers are not the only data which a court may properly consider in reaching a conclusion. It may consider oral representations and documents, apparently informative and reliable. Such data the trial court had before it through the Attorney General, counsel for the Commission and the plain-
290 tiffs' counsel. It would serve no useful purpose to set forth in detail the data, oral and documentary, which, it appears from the record and briefs, was thus presented to the trial court. Briefly, however, it included material informing the court that: The plaintiffs are parent public utility holding companies; they own stock[4]—more than 10% of the voting securities—in subsidiaries; some of the subsidiaries are themselves holding companies, and some are operating companies; the holding subsidiaries themselves own stock in holding companies and operating companies. The business of the systems (so far as is relevant to the litigation) is the production and marketing of electricity and gas. This is transmitted across state lines by the operating companies which are subsidiary to the holding companies which are themselves immediately subsidiary to the parent holding company. Service, sales, and construction contracts (forbidden by the statute in the absence of registration) involving interstate commerce exist in the plaintiff North American Company system between at least one holding company immediately

[4] It is such ownership that, under the Act, constitutes a company a holding company.

subsidiary to the parent on the one part, and its subsidiaries on the other. Similar service, sales and construction contracts exist between the plaintiff American Water Works and Electric Company, the parent itself, and its subsidiary operating companies; and at least one immediate holding subsidiary of the American Water Works and Electric Company has entered into service, sales, and construction contracts with its subsidiary operating companies. Neither of the plaintiff parent companies nor any of the companies within their systems has registered.

In the New York suit the defendant Electric Bond and Share Company is a parent public utility holding company; it owns stock in subsidiary holding companies, each of these is the parent of a system comparable in character and extent to the system of which each of the plaintiffs is a parent; these holding companies immediately subsidiary to the parent Electric Bond and Share Company, or a part of them, severally own stock in holding companies and in operating companies. The last mentioned holding companies, or a part thereof, in turn severally own stock in holding companies, which latter again own stock in operating companies. The business of the system (so far as is relevant to the litigation) is the production and marketing of electricity and gas. This is transmitted across state lines by the operating companies. All of the above mentioned companies, holding and operating, or such of them as typify the structure and activities described, are defendants in the New York suit. Service, sales, and construction contracts involving interstate commerce exist, in the Electric Bond and Share system, between a company immediately subsidiary to the parent Electric Bond and Share Company, and a company immediately subsidiary to that subsidiary, on the one part, and the holding companies immediately subsidiary to the parent, and their operating subsidiaries, on the other. Neither the parent Electric Bond and Share Company nor any of the companies within its system has registered. The local suits and the New York suit were brought for the purpose of testing the consti-
291 tutionality of the Act in all of its parts, in respect of the activities of the systems, and of the units thereof, respectively involved.

With such information before it concerning the local suits and the New York suit, and especially in view of the common object of the suits, I think the trial court could reasonably conclude that the New York suit would probably yield rulings as to the constitutionality of the Act and its parts, as to the separability of the parts, as to what is interstate commerce for electric and gas public utiliy holding companies—whether acting through immediate subsidiaries or through those more remote in the corporate structure—as to the constitutionality of the registration provision as such, and as to the effect upon the constitutionality of the registration provision of the prohibitions and penalties attendant upon non-registration and of the supervisory powers given to the Commission in the event of registration, including the effect of Section 11. And I think that the trial court could

reasonably conclude that these rulings would be in respect of stautory and factual patterns enough like those involved in the local suits to make the rulings in the New York suit practically fruitful for simpli'cation, and perhaps for disposition, of the local suits, even though the rulings in the New York suit would not be strictly res judicata as to the local suits. I conclude, therefore, that the court's decision was actuated by proper and sufficient representations and data.

Was the court's decision reasonable in respect of the rights of all concerned? As to the length of the stay, it is suggested that it is never to end except upon the determination in the New York suit of the validity of the Act by the Supreme Court of the United States, or until the termination of that suit otherwise. The stay motion was in such terms, literally, made, but it was not in such terms granted. It was "Ordered . . . that further proceedings . . . be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court . . ." The opinion indicates that the stay was granted for a definite purpose and upon definite conditions. The purpose was the saving of a "great amount of labor, time, and expense" through a prior decision in the New York suit, which "even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved."[5] The conditions were "a diligent and active prosecution of the Electric Bond and Share case." Moreover the court said that "In view of their assurances [the court was referring to the announcements, above referred to,[6] of the Commission, the Attorney General, and the Postmaster General] given before the filing of these suits, however, it would hardly seem necessary to issue a formal injunction, unless the plaintiffs insist upon it." The plaintiffs did not insist upon it and no formal injunction was entered; but clearly the stay was conditioned upon non-enforcement of the Act. The order is interlocutory in nature and therefore
292 remains within the control of the court which made it. If, during the progress of the New York suit it is made to appear to the trial court that the purpose of the stay will not be served, or that its conditions are not being fulfilled, the trial court may, and I think it should be assumed will, terminate the stay. Thus, if it is made to appear, as the New York suit progresses, that the issues of fact and law therein are not to be what, at the time of the stay order, the trial court reasonably concluded they would be, so that rulings fruitful for the local suits are improbable and labor, time and expense therefore not to be saved, or if it is made to appear that the New York suit is not being diligently prosecuted by the Commission or that, for whatever reason, it is not going forward actively, then the trial court will, I have no doubt, terminate the stay. Or if it

[5] Presumably the court had in mind the saving of labor, time, and expense not only for the parties and counsel but also for itself, a court of the same sovereignty as, and a court of parallel jurisdiction with, the United States District Court for the Southern District of New York.

[6] In footnote 2.

should be made to appear that the assurances of non-enforcement are not being adhered to, the trial court will impose an injunction, or terminate the stay.[7]

But the terms of the stay were such that, if its conditions remain fulfilled and its purpose continues probable of accomplishment, it may operate for a substantial period of time, and thus the plaintiffs' day in court in their own cases may be substantially postponed. But I am unable to agree that this makes the stay unreasonable. The right of the plaintiffs to be heard with reasonable promptness was not the only right involved in the administrative problem confronting the trial court. There was also the right of third parties—the plaintiffs and defendants in the various cases, civil and criminal, in the usual course of the judicial business of the Supreme Court of the District of Columbia—to seasonable trials; and there was, in addition, the right of the public through its agents, the defendants, to an adequately presented defense of the cases brought by the plaintiffs locally and of the many other similar cases not unlikely to be tried locally, and to an adequate and comprehensive test of the constitutionality, in the New York suit, of a statute of great public significance. Whatever solution of the administrative problem the trial court reached would affect all of these rights. It was inevitable from the very nature of the problem that at least one of them would be to some extent impaired: The exercise of the plaintiffs' right to a reasonably prompt day in court had, obviously, to a large extent been made unnecessary by the agreement of the defendants not to enforce the statute—this agreement to be made good by injunction if necessary; that is to say, the plaintiffs had in large part gained by this agreement what they would have gained by immediate and successful prosecution of their causes. Nevertheless, it is obvious also that their right to a reasonably prompt day in court (to the extent it may have been necessary for a ruling in respect of the mere existence of the statute and its cloud on their business, irrespective of enforcement—assuming in the plaintiffs' favor that there would have been a case or controversy for such a ruling) was impaired, through postponement, by the trial court's decision granting the stay. But a decision to the contrary, denying the stay, would have impaired the other rights involved: For the court to deny the stay was for the court to bring on for trial the plaintiffs' cases, complex and burdensome, not unlikely the five similar cases already filed locally, not unlikely forty-nine
293 others filed elsewhere but without jurisdiction of the defendants, and not inconceivably many more. Under the plaintiffs' theory each utility must in its own protection present its own case on its own facts. This would be to clot the flow of justice and to defer the day in court of the third party plaintiffs and defendants seeking to litigate their causes, civil and criminal; and this would

[7] It was suggested by the plaintiffs that possible successors in office of the defendants might not feel bound by the present assurances of non-enforcement.

be to engage the Commission and its counsel on so many legal battle fronts at once as likely to make inadequate their preparation and presentation of a defense in the local suits, and their preparation and presentation of a plaintiff's case in the comprehensive test suit in New York. Moreover, in no effective manner could such impairment of the rights of third parties and of the public be minimized by the plaintiffs or by the court as was impairment of the plaintiffs' right minimized by the defendants—so far as enforcement of the statute is concerned—through the agreement of non-enforcement, and, virtually by the court, through injunction. Even a middle course ruling—allowing the defendants short stays from time to time in the local cases rather than ruling categorically for or against the stay motion—would have been a ruling differing largely in form rather than in substance from the granting of the stay, and would hardly better have protected the plaintiffs. In short, it was inevitable that whichever way the trial court ruled, it would to some extent impair some of the rights involved. In these circumstances it cannot, I think, be said that the trial court was guilty of an abuse of discretion in granting the stay, for the same reasoning would make it guilty of abuse if it denied the stay, or took the middle course; this is reductio ad absurdum; the court could not decide at all.

I think no useful purpose would be served by a detailed discussion of the many authorities presented in the briefs on both sides. They differ so substantially in their facts from the instant problem that they do not constitute persuasive rulings. Indeed, there is no real dispute as to the ultimate proposition here involved, that is to say, as to the existence of power in a trial court, provided it acts upon proper and adequate data and reasonably, to solve according to discretion, rather than rule, and free of review, an administrative problem involving conflicting rights. In Kansas City Sou. Ry. v. United States, 282 U. S. 760, 763, the Supreme Court said:

"The question is thus one for the sound discretion of the District Court, in which such a suit is brought, to determine whether it should be permitted to continue or proceedings therein should be stayed, pending the final outcome of an earlier suit for the same purpose, to the end that there may not be a multiplicity of suits without substantial reason."

I think that the decision of the trial court—permitting an adequate and comprehensive test of an act the meaning and constitutionality of which it was important to the public at large to have determined, but permitting this upon terms which gave to the plaintiffs in large part what they would have gained by immediate and successful trial of their causes (thereby minimizing the consequence of postponement thereof), probably saving the parties and counsel and the courts much duplication of labor and expense, and keeping the Supreme Court of the District of Columbia free to carry on, in the usual course, its general judicial business—was a reasonable decision, properly within the scope of the trial court's discretion.

I think that the order of the trial court should be sustained.

294 Monday, June 22nd, A. D. 1936

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No. 6654. April Term, 1936

THE NORTH AMERICAN COMPANY, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY, &C., ET AL.

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the order of the said Supreme Court in this cause be, and the same is hereby, reversed, and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per MR. JUSTICE VAN ORSDEL.

JUNE 22, 1936.

Separate opinion by Mr. Justice GRONER.

Dissenting opinion by Mr. Justice STEPHENS.

Mr. Justice ROBB took no part in the consideration or decision of this case.

295 United States Court of Appeals for the District of Columbia

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

v.

JAMES M. LANDIS ET AL., APPELLEES

Designation of record

Now come James M. Landis, George C. Mathews, Robert E. Healy, James D. Ross, Homer Cummings, and James A. Farley, appellees in the above-entitled cause, and designate the following for inclusion in the transcript of record to the Supreme Court of the United States:

1. Printed record in the Court of Appeals.
2. Petition for allowance of special appeal.
3. Objections to allowance of special appeal.
4. Minute entry showing argument of cause.
5. Opinions of the Court of Appeals.

6. Decree of the Court of Appeals.
7. This Designation of Record.
8. Clerk's Certificate.

ROBERT H. JACKSON,
Assistant Attorney General and Special Counsel to the Securities and Exchange Commission.
Benjamin V. Cohen,
BENJAMIN V. COHEN,
Special Assistant to The Attorney General.

Service of a copy of the above Designation of Record is hereby acknowledged.

J. S. FLANNERY.

Dated: Washington, D. C., July 8, 1936.

(Endorsed): No. 6654. The North American Company, Appellant, v. James M. Landis et al. Designation of Record. United States Court of Appeals for the District of Columbia. Filed July 8, 1936. Moncure Burke, Clerk.

296 United States Court of Appeals for the District of Columbia

I, Moncure Burke, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 295, inclusive, constitute a true copy of the transcript of record and proceedings of the said Court of Appeals as designated by counsel for Appellees in the case of The North American Company, appellant, vs. James M. Landis, George C. Matthews, Robert E. Healy, and James D. Ross, Individually &c., et al., Nos. 6654, and 2559 Original, April Term, 1936, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 9th day of July A. D. 1936.

[SEAL]

MONCURE BURKE,
Clerk of the United States Court of Appeals for the District of Columbia.
By C. PRESTON GAINOR,
Assistant Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1936

297 Supreme Court of the United States

Order allowing certiorari

Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is advanced and assigned for argument at the head of the call on Monday, November 9, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1936